

G397MIR1

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

S2 14 Cr. 810 (CM)

6 MOSHE MIRILISHVILI,

7 Defendant.

Trial

8 -----x  
9 New York, N.Y.  
10 March 9, 2016  
11 10:00 a.m.

12 Before:

13 HON. COLLEEN McMAHON,

District Judge

14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the  
17 Southern District of New York

EDWARD DISKANT

BROOKE CUCINELLA

18 Assistant United States Attorneys

HENRY MAZUREK

WAYNE GOSNELL

19 Attorneys for Defendant

20 ALSO PRESENT: MICHAEL MULLER, DEA

21 ELIZABETH JOYNES, Paralegal

22 MICHAEL DOMANICO, Paralegal

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1 (Trial resumed; jury not present)

2 THE COURT: So, for substantially the reasons  
3 articulated in the government's letter, Dr. Mirilishvili's  
4 renewed motion is denied.

5 Can we get our witness back on the stand?

6 MR. DISKANT: Your Honor, with the court's permission  
7 and the consent of defendant, we're going to interrupt the  
8 testimony of Damon Leonard to begin with Timothy Dewey, who is  
9 a custodian from the New York State Bureau of Narcotics  
10 Enforcement.

11 THE COURT: OK. Are we also go on to your other  
12 witnesses here just for the day?

13 MR. DISKANT: We are, your Honor.

14 (Continued on next page)

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1 (In open court)

2 (Jury present)

3 THE COURT: Good morning. So as you sit down you will  
4 notice that this is not Mr. Leonard. The reason is that we  
5 have a couple of witnesses who have come in from out of town.  
6 One of the pleasant things about this trial is that the lawyers  
7 have been so wonderfully cooperative to work with, and they  
8 have agreed with one another that we will interrupt the  
9 testimony of Mr. Leonard to get these people on and off the  
10 stand so that they can go back to wherever they came from, and  
11 then we will go back to Mr. Leonard.

12 So, would you call your next witness, please.

13 MR. DISKANT: Yes, your Honor. The government calls  
14 Timothy Dewey.

15 TIMOTHY DEWEY,

16 called as a witness by the government,

17 having been duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. DISKANT:

20 Q. Good morning, Mr. Dewey.

21 A. Good morning.

22 Q. Where are you currently employed?

23 A. I'm employed with the New York State Department of Health,  
24 Bureau of Narcotic Enforcement.

25 Q. The Bureau of Narcotic Enforcement, that's a state agency?

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1 A. Yes.

2 Q. Is it also sometimes referred to as BNE?

3 A. It is.

4 Q. What is your title with the BNE?

5 A. I'm a senior investigator, sir.

6 Q. And what sorts of things do you do as a senior investigator  
7 for BNE?

8 A. I investigate crimes concerning prescription controlled  
9 substances, diversion of controlled substances, loss of  
10 prescriptions, etc.

11 Q. And how long have you been a senior investigator for BNE?

12 A. Since 2013, sir.

13 Q. And how long have you been with BNE in total?

14 A. Almost ten years.

15 Q. Were you employed prior to joining BNE?

16 A. I was.

17 Q. What were you doing then?

18 A. I'm a retired special agent from the United States Air  
19 Force, Office of Special Investigations.

20 Q. And how long were you with the Air Force?

21 A. I was with the Air Force a little over 20 years.

22 Q. Let's go back to BNE. Can you tell us a little bit about  
23 what it is that BNE does as a state agency.

24 A. We're the agency that regulates and controls controlled  
25 substances throughout New York State. We issue prescriptions

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1 to providers in New York State. The official New York State  
2 prescription is the prescription that only providers in New  
3 York State can use. We investigate crimes for incidents  
4 surrounding those.

5 Q. In addition to issuing prescriptions -- by prescriptions  
6 you're referring to prescription pads --

7 A. Yes, sir.

8 Q. -- to providers, does BNE collect any data or information  
9 on prescriptions once filled?

10 A. Yes, we do.

11 Q. Can you tell us a little bit about that?

12 A. We collect information from the pharmacies on a daily basis  
13 with regards to controlled substance when a prescription is  
14 written in New York State. That information includes things  
15 like the serial number, the provider's name, the patient's  
16 name, their dates of birth, the substance for which the  
17 prescription was written, etc.

18 Q. And you mentioned that BNE does this for controlled  
19 substance prescriptions?

20 A. Yes.

21 Q. What is a controlled substance?

22 A. A controlled substance is a substance that is regulated or  
23 controlled by the government that deemed upon its medical use  
24 or the possibility for its addition properties.

25 Q. Can you give us some examples of controlled substances?

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1 A. Oxycodone, hydrocodone, Ambien, Xanax, things of that  
2 nature.

3 Q. Let's talk a little bit about those two different sets of  
4 areas or functions you described, the first being the issuance  
5 of prescription pads to prescribers. Can you talk us through  
6 the process for how it is a doctor in the State of New York  
7 obtains blank prescription pads.

8 A. A provider would go on to the New York State Health  
9 Commerce account, provide it with their information and order  
10 prescription pads or prescriptions, and the prescriptions are  
11 then sent to the provider's address.

12 Q. Can a New York State prescriber obtain them from any source  
13 other than the BNE?

14 A. No.

15 Q. Mr. Dewey, if you could take a look at what has been marked  
16 for identification purposes as Government Exhibit 902 and let  
17 me know if you recognize that.

18 A. I do.

19 Q. What are you looking at?

20 A. This is an example of blank prescription pads.

21 MR. DISKANT: The government offers 902.

22 MR. GOSNELL: No objection.

23 THE COURT: Admitted.

24 (Government's Exhibit 902 received in evidence)

25 MR. DISKANT: If we can publish that, Ms. Joynes.

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1 Q. Mr. Dewey, you were saying this is an example of what four  
2 blank prescription pads side by side might look like?

3 A. Correct.

4 Q. And an individual sheet, how many individual sheets or  
5 prescription pages would be contained in a pad?

6 A. A pad contains 100 prescriptions.

7 Q. So this would be a total of 400 prescriptions if it was  
8 four pads?

9 A. Correct.

10 Q. Does BNE impose any security features on a typical  
11 prescription pad?

12 A. We do, yes.

13 Q. What sorts of security features does BNE impose?

14 A. So, we use a sole source provider, and the prescriptions  
15 have forge resistance characteristics built in the  
16 prescriptions.

17 If you were to photocopy an official New York State  
18 prescription, the word void shows up in numerous areas across  
19 the front of the prescription.

20 The key factor that we use is on the lower right-hand  
21 corner, we impose an eight digit sequence of numbers or  
22 alphanumeric sequence that is individualized for each  
23 prescription, so it's a serial number that's specifically for  
24 that prescription.

25 Q. And, Mr. Dewey, perhaps to make this easier, if I could

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1 direct your attention to what has been marked for  
2 identification purposes as Government Exhibit 903. It should  
3 be in that Redwell in front of you.

4 A. Yes, sir.

5 Q. Do you recognize this?

6 A. I do.

7 Q. What is it?

8 A. This is another example of some of the forge resistant  
9 characteristics of official New York State prescriptions.

10 MR. DISKANT: The government offers 903.

11 MR. GOSNELL: No objection.

12 THE COURT: Admitted.

13 (Government's Exhibit 903 received in evidence)

14 Q. Mr. Dewey, you were just explaining to the jury some of the  
15 typical security features imposed on a prescription pad. The  
16 last one you were talking about was that serial number. Does  
17 the serial number appear -- or where on 903 would the serial  
18 number appear?

19 A. The lower right-hand corner where it says void 00.

20 Q. So in an actual prescription, rather than the example we're  
21 looking at, what would appear where it says void 00?

22 A. It would have a sequence of letters or numbers, eight  
23 letters or numbers.

24 Q. And I believe you testified before that that was a unique  
25 sequence?

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1 A. It is.

2 Q. Do any two prescription sheets issued by the BNE have the  
3 same eight digit sequence?

4 A. No, they do not.

5 Q. Does BNE when it issues blank prescription pads to  
6 prescribers maintain any data on those pads?

7 A. We keep a record of the prescriptions that are shipped out  
8 to the providers, yes.

9 Q. Do you maintain a record of the serial numbers for those  
10 pads?

11 A. We do.

12 Q. If you could take a look at what should be before you as  
13 Government Exhibit 905 and let me know if you recognize it.

14 A. I do.

15 Q. What is it?

16 A. This is a BNE record of Dr. Mirilishvili's ordering  
17 practices for prescriptions in New York State.

18 Q. And so this is for a particular provider whose name is Dr.  
19 Mirilishvili?

20 A. Correct.

21 MR. DISKANT: The government offers 905.

22 MR. GOSNELL: No objection.

23 THE COURT: Admitted.

24 (Government's Exhibit 905 received in evidence)

25 MR. DISKANT: Ms. Joynes, if we could focus on just

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1 the left half of the page where the text appears, and perhaps  
2 even zoom in a little bit further just on that top green box.  
3 Great.

4 Q. So, Mr. Dewey, if you could just talk us through what we  
5 are looking at. There is a name and address indicated sort of  
6 towards the top of the document that we are looking at. What  
7 is the name?

8 A. Moshe Mirilishvili.

9 Q. And that's the name of the doctor making the order?

10 A. Correct.

11 Q. And the address below is what?

12 A. I believe the address that he was practicing out of.

13 Q. If we go up to the top portion of that same section of the  
14 document where it says Proc date, do you see that?

15 A. Say that -- oh, process date, yes, sir.

16 Q. Process date is what that means?

17 A. Correct.

18 Q. And what is the date that follows that? What does that  
19 indicate?

20 A. That's the date that the order was processed.

21 Q. And just below that date there are two eight alphanumeric  
22 sequences separated by a dash, 0S07J500 and then 0S07J599. Do  
23 you see that?

24 A. Yes, sir.

25 Q. What are those?

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1 A. Those are the serial numbers of the 2,000 prescriptions  
2 that are indicated below. Those 2,000 prescriptions fall in  
3 between those two numbers.

4 Q. So the 2,000 blank prescription sheets that were issued to  
5 defendant on this date would fall within those serial number  
6 ranges?

7 A. They would.

8 MR. DISKANT: Ms. Joynes, if we can move over to the  
9 purple side of the document.

10 Q. What are we looking at here, Mr. Dewey?

11 A. We are looking at the Petitioner's information.

12 Q. Would any of this information appear on the prescription as  
13 issued by BNE?

14 A. Yes, they would.

15 Q. What of this information would appear?

16 A. The name, the address, the DEA number should appear, or a  
17 box where the DEA number can be placed.

18 MR. DISKANT: We can take that down, Ms. Joynes.

19 Q. Sir, we talked a little bit about BNE's role in issuing  
20 blank prescription pads. You testified a few moments ago that  
21 the other thing BNE does is collect data on prescriptions once  
22 filled.

23 A. Yes.

24 Q. Can you tell us a little bit about how BNE does that.

25 A. Pharmacies in New York State when they dispense a

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1 controlled substance are required to report that information to  
2 the Department of Health, Bureau of Narcotic Enforcement, and  
3 the information is reported via the prescription serial number  
4 normally through electronic means on a daily basis.

5 Q. Let's go through that step by step. You said that a  
6 pharmacy is required to report information when the  
7 prescription is filled?

8 A. Yes.

9 Q. What information does a pharmacy report?

10 A. They need to report the serial number of the prescription  
11 that they filled, the provider who wrote the prescription, the  
12 substance for which the prescription was written, the method of  
13 payment for the prescription, the amount prescribed, the days  
14 for the prescription, as well as the patient's name, the date  
15 of birth and identifying information.

16 Q. And how does the pharmacy gather that information before  
17 reporting it?

18 A. They gather it off the prescription as it enters through  
19 their business' official business records.

20 Q. Do BNE or state law impose any requirements on pharmacies  
21 in that regard?

22 A. We do.

23 Q. Can you tell us about that?

24 A. Yeah, it's required that they report on a daily basis for  
25 what we consider real-time.

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1 Q. Has a pharmacy always been required to report that on a  
2 daily basis?

3 A. No. Previously to this they were required to report  
4 biweekly.

5 Q. And when did that change occur?

6 A. It was August of 2013.

7 Q. Does BNE collect data on prescriptions for noncontrolled  
8 substances?

9 A. No, we do not.

10 Q. For example, if a New York State pharmacy was to fill a  
11 prescription for Penicillin, would that be reported to BNE?

12 A. No.

13 Q. How about prescriptions that are written by New York  
14 doctors but filled at a pharmacy out of state; is that reported  
15 to BNE?

16 A. No, it's not.

17 Q. To give you an example, if a prescription was written by a  
18 New York doctor but filled in a pharmacy in New Jersey, would  
19 that be collected by BNE?

20 A. No, we don't collect that information.

21 Q. Does BNE have the ability to source the data that it  
22 collects by a prescribing physician?

23 A. We do.

24 Q. How does BNE do that?

25 A. Well, there are several different ways. We can sort the

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1 information by name. We can sort the information by DEA  
2 registrant number, or we can collect the information or sort  
3 the information through the New York State license, physician  
4 license or provider license.

5 Q. I'm going to direct your attention to what has been marked  
6 for identification purposes as Government Exhibit 901. Let me  
7 know if you recognize that.

8 A. Yes, I do.

9 Q. How do you recognize it?

10 A. By my initials and the date that I placed on this disk.

11 Q. Before dating and initialing the disk, did you review it?

12 A. I did.

13 Q. What is on it?

14 A. This is prescribing data for Dr. Moshe Mirilishvili.

15 Q. Is that data that was gathered by the BNE?

16 A. It was, yes.

17 Q. Where was it collected from?

18 A. From reporting pharmacies.

19 Q. Was the data collected at or near the time the  
20 prescriptions were filled?

21 A. It was.

22 Q. Was the report made to BNE by someone with knowledge of the  
23 prescription filled?

24 A. The pharmacy, yes, sir.

25 Q. Was the data collected by the BNE as part of its regularly

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1 conducted business activities?

2 A. Yes, sir, that's what we do.

3 MR. DISKANT: The government offers Government Exhibit  
4 901.

5 MR. GOSNELL: No objection.

6 THE COURT: Admitted.

7 (Government's Exhibit 901 received in evidence)

8 MR. DISKANT: Ms. Joynes, if we can publish the  
9 contents of 901 and take a look together at line 3959.

10 Q. Mr. Dewey, what are we looking at here?

11 A. This is a reflection of the data that's BNE collects from  
12 the pharmacist.

13 Q. And I have asked Ms. Joynes to highlight just one example  
14 of that. Let's walk through it together. What is the  
15 information indicated in column A?

16 A. Column A would be the individual prescription number, that  
17 prescription that entered that pharmacy.

18 Q. We were talking a few moments ago about that unique eight  
19 digit alphanumeric sequence. Is that what we're looking at in  
20 column A?

21 A. Yes.

22 Q. Column B?

23 A. Column B indicates the day that the prescription was  
24 actually written.

25 Q. And column C?

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1 A. C is the actual date that the pharmacy filled the  
2 prescription.

3 Q. How about column F?

4 A. F would be the provider's name.

5 Q. So what we are looking at would be a prescription written  
6 on January 10 by Dr. Mirilishvili?

7 A. Correct.

8 Q. If we could scroll over a little bit. Let's take a look at  
9 column H and J and L. Starting with H, what is H?

10 A. This is the substance for which the prescription was  
11 written.

12 Q. So this particular prescription was for oxycodone  
13 hydrochloride 30 milligram tablets?

14 A. Yes, it was.

15 Q. And column K, what does that indicate?

16 A. Sorry, sir?

17 Q. Column K?

18 A. Column K is the quantity.

19 Q. OK. And column L?

20 A. Column L is the strength of the product.

21 Q. So the entry we're looking at is a prescription that was  
22 filled for 90 30 milligram oxycodone tablets?

23 A. Correct.

24 Q. Let's keep scrolling a little bit. Directing your  
25 attention, Mr. Dewey, to columns O and P, what are those?

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1 A. Those are the patients' names.

2 Q. And column W?

3 A. W is the method of payment.

4 Q. And is that the method of payment fore seeing the doctor or  
5 for filling the prescription?

6 A. That's the method of payment for the pharmacy or filling  
7 the prescription.

8 Q. Does BNE collect data on the method of payment for seeing  
9 the doctor?

10 A. No.

11 Q. Just keep scrolling and take a look at column Z. What is  
12 that?

13 A. Column Z is the pharmacy that filled the prescription.

14 Q. Thank you.

15 If we can just scroll all the way down to the bottom  
16 of this spreadsheet.

17 Mr. Dewey, what time period is reflected on this  
18 spreadsheet?

19 A. This is 2012 I believe through 2014.

20 Q. Let's go all the way up to the top.

21 A. I'm sorry, 2010.

22 Q. January 2010 to December 2014?

23 A. Correct.

24 Q. And how many controlled substance prescriptions were  
25 reported as written by Dr. Moshe Mirilishvili to BNE?

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1 A. 16,711.

2 Q. Mr. Dewey, are you familiar with the issue of prescription  
3 forgeries?

4 A. I am.

5 Q. Can you tell us a little bit about that.

6 A. Well, in New York State some people have a tendency to  
7 forge prescriptions to garner controlled substances for illicit  
8 use.

9 Q. And does BNE have any way, based on the data it collects,  
10 to monitor for prescription forgeries or potential forgeries?

11 A. We do.

12 Q. How do you do that?

13 A. Many times we will compare the serial number of a  
14 prescription that's sent to the pharmacy to the provider to  
15 ensure that they're the same, that that prescription pad was  
16 actually issued to that provider.

17 Q. So just to break that down a bit, the serial numbers in  
18 column A you testified previously were unique?

19 A. Correct.

20 Q. And when you issue a prescription pad to the provider, do  
21 you maintain a record of the serial numbers on those pads?

22 A. We do.

23 Q. And you are able to compare those two items?

24 A. We do.

25 Q. If the serial number in column A matches a serial number on

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1 a prescription pad issued to the prescriber, what does that  
2 mean to BNE?

3 A. It would indicate that the prescription was written by the  
4 provider.

5 Q. If the prescription number as reported in column A does not  
6 match a pad issued to that prescriber, what does that mean to  
7 BNE?

8 A. It could mean that it's a possible forgery.

9 Q. Are there other potential implications?

10 A. It could mean that the provider was working at an  
11 institution where their pads weren't being used.

12 Q. Let's talk a little bit about that. In addition to issuing  
13 prescription pads to providers, does BNE issue prescription  
14 pads to anyone else?

15 A. We issue to institutions, hospitals, clinics, multiple  
16 provider locations.

17 Q. So if a practitioner was working at a hospital, for  
18 example, would a practitioner be entitled to write a  
19 prescription on a pad that was ordered by the hospital?

20 A. It would be.

21 Q. You talked a bit about forged prescriptions. Are you  
22 familiar with the issue of stolen prescriptions?

23 A. I am.

24 Q. Is there any way, based on BNE data for the BNE to monitor  
25 the potential of stolen prescriptions?

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1 A. Yes.

2 Q. How does BNE do that?

3 A. We require -- it's a law in New York State that providers  
4 must report lost or stolen prescriptions to the BNE.

5 Q. Mr. Dewey, if I could direct your attention to what has  
6 been marked for identification purposes as Government Exhibit  
7 904.

8 A. Yes, sir.

9 Q. Do you recognize that?

10 A. I do.

11 Q. What is that?

12 A. This is a lost or stolen prescription report.

13 Q. For whom?

14 A. For Dr. Mirilishvili.

15 Q. Is this a record kept and maintained by the BNE?

16 A. It is.

17 MR. DISKANT: The government offers 904.

18 MR. GOSNELL: No objection.

19 THE COURT: Admitted.

20 (Government's Exhibit 904 received in evidence)

21 MR. DISKANT: Ms. Joynes, can you just zoom in on the  
22 top of this document.

23 Q. So, Mr. Dewey, according to the document, how many total  
24 prescriptions had Dr. Mirilishvili reported as stolen?

25 A. 14.

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1 Q. And in addition to reporting a total number of  
2 prescriptions stolen, are physicians required to report any  
3 other sort of information?

4 A. The prescription range, the individual serial numbers.

5 Q. Those unique numbers we were talking about before?

6 A. Correct.

7 MR. DISKANT: Ms. Joynes, if we can go to the second  
8 page of this document.

9 Q. What is this, Mr. Dewey?

10 A. This indicates the DEA registrant number in the beginning,  
11 the date that the lost or stolen prescriptions were reported,  
12 and then the end would be the prescription serial numbers  
13 themselves, the range.

14 Q. For the range that was reported as stolen?

15 A. The range, yes.

16 Q. And this report was made on September 24, 2013?

17 A. Yes, sir.

18 Q. For the time period that we have been talking about, 2010  
19 to 2014, does BNE have any additional records of prescriptions  
20 reported as stolen by this practitioner?

21 A. No, sir.

22 Q. Using this information, that is, the information on the  
23 reported stolen prescriptions --

24 If we can go back, Ms. Joynes, to 901.

25 -- were you able to determine whether any of the

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1 prescriptions reported as stolen were subsequently filled at a  
2 pharmacy?

3 A. Yes, I was.

4 Q. How many of the 14 stolen prescriptions were then reported  
5 as filled?

6 A. 12.

7 Q. And additionally we were talking about the ability of BNE  
8 to compare the unique serial numbers reported as filled to the  
9 serial numbers on the pads issued to the provider, in this case  
10 Dr. Mirilishvili. Have you been able to do that with the  
11 16,711 prescriptions reported in Government Exhibit 901?

12 A. Yes.

13 Q. How did you do that, by the way?

14 A. Actually I went line by line through the prescriptions.

15 Q. Let's take it by time period if we can. Focusing your  
16 attention on the time period January 1 of 2012 to December 31,  
17 2014, approximately how many controlled substance prescriptions  
18 were reported to BNE as being written by Dr. Mirilishvili?

19 A. Over 15,000.

20 Q. And of those more than 15,000, how many of them were you  
21 unable to match to a prescription pad issued to Dr.  
22 Mirilishvili?

23 A. 216.

24 Q. So with respect to the remaining, all other than the 216,  
25 you were able to match the serial number reported by the

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pharmacy to a prescription pad issued to Dr. Mirilishvili?

A. I was.

Q. If I can direct your attention, Mr. Dewey, to the disk that's been marked as Government Exhibit 901-A. Do you recognize that?

A. I do.

Q. How do you recognize it?

A. By my initials and the date that I placed on the disk.

Q. And what is contained on Government Exhibit 901-A?

A. This is the BNE data from the period of 2012 through 2014 for the doctor.

Q. Is anything omitted from Government Exhibit 901-A?

A. Yes, we omitted the 216 prescriptions that cannot be matched as well as the 12 stolen prescriptions that were reported.

MR. DISKANT: The government offers 901-A.

MR. GOSNELL: No objection.

THE COURT: Admitted.

(Government's Exhibit 901-A received in evidence)

20 Q. Were you able to conduct a similar analysis for the time  
21 period 2010 and 2011?

22 A. I was.

23 Q. OK. Is it fair to say there are approximately 1299  
24 controlled substances prescriptions reported to BNE and written  
25 by the defendant during that time period?

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1 A. That is correct.

2 Q. Of those, what percentage were you able to match to a  
3 prescription pad issued to the defendant?

4 A. 49 percent.

5 Q. And again how did you do that?

6 A. Line by line, checking the serial numbers to the order to  
7 prescriptions that were provided to the doctor.

8 Q. And I am directing your attention to what has been marked  
9 for identification purposes as Government Exhibit 901-B.

10 A. Yes, sir.

11 Q. Do you recognize that?

12 A. I do.

13 Q. How do you recognize it?

14 A. By my initials and the date that I placed on the CD.

15 Q. And before initialing and dating the CD, did you review its  
16 contents?

17 A. I did.

18 Q. What does it contain?

19 A. It contains the prescribing BNE data history from 2010  
20 through 2011.

21 Q. And with respect to -- does it contain all of the data or  
22 just a subset?

23 A. This is all of the data.

24 Q. We talked just a moment ago, Mr. Dewey, about the process  
25 that you are going through of segregating out the prescriptions

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1 you were able to match.

2 A. Correct.

3 Q. Did you segregate out the 49 percent?

4 A. That's correct, these are the prescriptions written on the  
5 doctor's pads.

6 Q. So just to be clear, the Government Exhibit 901-B is the 49  
7 percent of the prescriptions reported in 2010 and 2011 that you  
8 were able to match to a pad issued to the defendant?

9 A. It is.

10 MR. DISKANT: The government offers 901-B.

11 MR. GOSNELL: No objection.

12 THE COURT: Admitted.

13 (Government's Exhibit 901-B received in evidence)

14 Q. With respect to the remaining 51 percent of the controlled  
15 substance prescriptions reported during that time period, were  
16 you able to identify the source of the prescription pads for  
17 any of those?

18 A. Yes, I was.

19 Q. If I can direct your attention, Mr. Dewey, to what has been  
20 marked for identification purposes as Government Exhibit 906.

21 A. Yes, sir.

22 Q. Do you recognize that?

23 A. I do.

24 Q. What is it?

25 A. This is an order history for prescriptions for La Casa De

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Dewey - direct

1 Salud.

2 Q. Is this a record of the BNE?

3 A. Yes, it is.

4 MR. DISKANT: The government offers 906.

5 MR. GOSNELL: No objection.

6 THE COURT: Received.

7 (Government's Exhibit 906 received in evidence)

8 MR. DISKANT: Ms. Joynes, can we publish that. Let's  
9 focus on the left-hand side, that top left green area, Ms.  
10 Joynes, if we can. Actually just a little bit higher if you  
11 don't mind so we get those tabs.

12 Q. So, Mr. Dewey, here we're looking at a tab on the top that  
13 says institution. Do you see that?

14 A. Yes.

15 Q. And towards the bottom of the screen as we are looking at  
16 it now it says product institution RX?

17 A. Correct.

18 Q. What sort of a prescription pad order is this?

19 A. This is a prescription pad for the institution itself that  
20 apparently has multiple providers at that location.

21 Q. When we were talking a few moments ago about the fact that  
22 BNE issued prescriptions both to providers and to institutions,  
23 is this an example of the latter category?

24 A. It is.

25 Q. And this particular institution, where is it located?

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Dewey - direct

1 A. This is in the Bronx, I believe.

2 Q. 966 Prospect Avenue?

3 A. Yes.

4 Q. And if we go up to the top, do you see again the eight  
5 digit alphanumeric sequence followed by a dash, followed by  
6 another eight digit sequence?

7 A. Correct.

8 Q. What is that?

9 A. That's the range of prescription that the 5,000  
10 prescription total falls between.

11 Q. And were you able to associate Dr. Mirilishvili with this  
12 particular institution?

13 A. I was.

14 Q. If we can bring up what is in evidence as Government  
15 Exhibit 1206 and just focus down on that bottom half. Do you  
16 see the address of Case De Salud here?

17 A. Yes, do.

18 Q. That is the 966 Prospect Avenue, Bronx, New York address?

19 A. Yes.

20 Q. Mr. Dewey, in your line-by-line analysis, what percentage  
21 of the prescriptions reported as written by the defendant  
22 during the period 2010 to 2011 were you able to correspond to  
23 prescription pads issued to La Casa De Salud?

24 A. It was approximately 46 percent of the prescriptions.

25 Q. And I'm directing your attention to what has been marked as

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Dewey - direct

1 Government Exhibit 901-C. If you could take a look at that.

2 A. Yes, sir.

3 Q. Do you recognize that?

4 A. I do.

5 Q. How do you recognize it?

6 A. By my initials and the date that I placed on the CD.

7 Q. And the contents of the CD, did you review that before  
8 initialing it?

9 A. I did.

10 Q. What does that contain?

11 A. This contains the 2010 to the 2011 La Casa De Salud  
12 prescriptions.

13 Q. Written by the defendant?

14 A. Correct.

15 MR. DISKANT: The government offers 901-C.

16 MR. GOSNELL: No objection.

17 THE COURT: Admitted.

18 (Government's Exhibit 901-C received in evidence)

19 Q. Mr. Dewey, just to put those two analyses together, it  
20 sounds like you were able to identify 49 percent as written on  
21 pads issued to the defendant; is that right?

22 A. Correct.

23 Q. And 46 percent is issued on pads written -- excuse me --  
24 written on pads issued to Casa De Salud?

25 A. Correct.

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Dewey - direct

1 Q. One final subject, Mr. Dewey. Are you familiar with  
2 something called the ISTOP program?

3 A. I am.

4 Q. What is the ISTOP program?

5 A. The ISTOP is the prescription monitoring program that New  
6 York State administers that stands for the Internet System to  
7 Track Overprescribing. It's to ensure that providers go on to  
8 the PDMP or the PMP program and to ensure that their patients  
9 have not received -- or it gives them a snapshot of the  
10 controlled substances that their patients have received in the  
11 last six months.

12 Q. Very briefly, how does it work?

13 A. The providers are authorized to go on to the PDMP and check  
14 the patient's name, their date of birth, to ascertain whether  
15 or not they have received controlled substances from any other  
16 providers in that time period.

17 Q. And why is that important to BNE?

18 A. Well, it's public safety and public health, because we had  
19 quite a few people that were out doctor shopping from doctor to  
20 doctor, garnering prescriptions and taking them out onto the  
21 streets.

22 Q. For prescribers in the State of New York is participation  
23 in the PMP program optional?

24 A. No, it's mandatory.

25 Q. And when did PMP or ISTOP take effect?

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Dewey - cross

1 A. August 27, 2013 is the date it went in place.

2 Q. And does the BNE have any way of monitoring whether or not  
3 a prescriber is complying with PMP?

4 A. We can, yes.

5 Q. How do you do that?

6 A. We can go on by doctor's name and check to see -- it gives  
7 us a listing of the patients that the doctors checked.

8 MR. DISKANT: Your Honor, if I can just have a moment.

9 Nothing further.

10 THE COURT: Cross?

11 MR. GOSNELL: May I inquire, your Honor?

12 THE COURT: You may.

13 CROSS EXAMINATION

14 BY MR. GOSNELL:

15 Q. Good morning, Mr. Dewey.

16 A. Good morning.

17 Q. I'm Wayne Gosnell. I represent Dr. Mirilishvili. We  
18 haven't met before, have we?

19 A. No.

20 Q. I want to start where we kind of left off with the PMP  
21 program. You said that doctors are required as of August 2013  
22 to run checks on their patients before prescribing a controlled  
23 substance, correct?

24 A. Correct.

25 Q. And they're also allowed to designate someone in the office

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Dewey - cross

1 to run that check for them.

2 A. Correct.

3 Q. You are aware that the prescription monitoring program, the  
4 PMP program, is a very sensitive program.

5 A. It is.

6 Q. So, for example, if a name is entered incorrectly either by  
7 the pharmacy or by the doctor searching for it, you may not  
8 find all the results.

9 A. The provider may not find all the results, correct.

10 Q. BNE would have a record of the prescription being filled,  
11 but if you're searching in the PMP system it may not show up if  
12 you're using a name backwards, for example.

13 A. Correct, you would get not the information for the patient  
14 you were looking for.

15 Q. OK. And the PMP system -- and in fact BNE records  
16 themselves -- they don't collect -- sorry, the New York BNE  
17 records, they don't collect information if a patient has filled  
18 a prescription in a different state.

19 A. No.

20 Q. And they don't collect information if a patient has filled  
21 their prescription through the VA hospitals, correct?

22 A. No. But we have given the VA authorization to use the PDMP  
23 program, so there are people in the VA checking the systems.

24 Q. But if a doctor was checking on a patient who had filled  
25 their prescription through the VA system, they would not be

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Dewey - cross

1 able to see that because the VA doesn't report that information  
2 to the BNE.

3 A. That's correct.

4 Q. And the PMP records themselves, they only show you a  
5 snapshot of about six months for the patient, correct?

6 A. The provider can see six months. BNE itself can see back  
7 five years.

8 Q. OK. But the provider, if the provider is doing a check on  
9 a patient, they're only going to see six months.

10 A. That's correct.

11 Q. And that's to the day.

12 A. Correct.

13 Q. Now, you said that one of the things that the Bureau of  
14 Narcotics Enforcement does is that you investigate stolen  
15 prescriptions.

16 A. That's correct.

17 Q. And a provider, if he is aware that prescriptions have been  
18 stolen, is required by law to report that information to the  
19 Bureau of Narcotics Enforcement.

20 A. That's correct.

21 MR. GOSNELL: Can we bring up Government Exhibit 904.

22 Q. Do you have 904 in front of you?

23 A. Yes, sir, I do.

24 Q. You testified on direct examination that this was a record  
25 that the Bureau of Narcotics Enforcement made regarding

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Dewey - cross

1 prescriptions that were stolen from Dr. Mirilishvili.

2 A. That's correct.

3 Q. And the date of the report is September 24th of 2013,  
4 correct?

5 A. I believe that's on the reverse side, sir.

6 Q. Sorry, we're having a little technical difficulties here.

7 In the upper left-hand corner it says report date? Is  
8 that a little clearer now?

9 A. Yes, sir.

10 Q. It indicates it was reported on September 24th of 2013.

11 A. Correct.

12 Q. And once a report of prescriptions being stolen are made,  
13 the Bureau of Narcotics Enforcement sends an alert out to  
14 pharmacies?

15 A. We place the information on our website, which allows the  
16 pharmacies to look at those prescriptions.

17 Q. And pharmacies are required to look at that before they  
18 fill a prescription.

19 A. I don't know about the requirement, sir, but it certainly  
20 is encouraged.

21 Q. It's something they should do.

22 A. Correct.

23 Q. And you are aware from your review of the records that --  
24 well, withdrawn.

25 If the prescriptions were stolen on September 23rd of

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Dewey - cross

1 2013, and it was reported on September 24th of 2013, that would  
2 be a timely reporting by Dr. Mirilishvili, correct?

3 A. I would agree with that, yes, sir.

4 Q. OK. And between the time that the -- assuming the  
5 prescriptions were stolen on the 23rd, between the time that  
6 those were stolen and the time that they were reported and the  
7 time that you put the alert up on your website, you're aware  
8 based on your review of the records that those prescriptions  
9 were filled.

10 A. I didn't get in that detail, sir.

11 Q. OK. But that's something that you can check by looking at  
12 the particular prescription pad numbers that were reported  
13 stolen and going back to Government Exhibit 900, correct?  
14 Which was the entire BNE records.

15 A. You could, I believe.

16 Q. You didn't personally do that, but it can be done.

17 A. No, I did not.

18 Q. OK. You also testified on direct examination that the BNE  
19 records only show controlled substance prescriptions.

20 A. Correct.

21 Q. OK. And it doesn't just show oxycodone. That is,  
22 oxycodone is a controlled substance, correct?

23 A. It is.

24 Q. And so if a prescription is issued for oxycodone and is  
25 filled, that's going to show up on the BNE records.

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Dewey - cross

1 A. Yes, sir.

2 Q. Oxycontin is a different type of controlled substance.

3 A. Yes.

4 Q. That would show up on the BNE records.

5 A. Yes.

6 Q. Lyrica is a different type of controlled substance,  
7 correct?

8 A. Correct.

9 Q. That's used to treat nerve damage caused by diabetes.

10 A. To my understanding, yes, sir.

11 Q. OK. And that would show up on the BNE records that that  
12 was a prescription that was issued and filled.

13 A. Yes, sir.

14 Q. Opana is a different type of controlled substance.

15 A. Yes.

16 Q. That would show up on the BNE records?

17 A. It should.

18 Q. Methadone is a different type.

19 A. Yes, sir.

20 Q. And that would show up?

21 A. It should.

22 Q. And Endocet and Percocet, which is a mixture of oxycodone  
23 and Tylenol, that would also show up?

24 A. It should, yes, sir.

25 Q. OK. And that's something that if you were to look through

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Dewey - cross

1 the spreadsheet, you can sort through it, and you can tell  
2 whether or not there are those different prescriptions issued  
3 and filled under Dr. Mirilishvili's prescriptions, correct?

4 A. Yes, sir.

5 Q. The other thing that you mentioned was the method of  
6 payment. That's something that shows up on the BNE records.

7 A. Yes, sir.

8 Q. And that would show whether or not the person filling the  
9 prescription was paying in cash, was paying insurance and  
10 sometimes it's more specific and it said Medicaid, correct?

11 A. Yes, sir.

12 Q. And again that has nothing to do with the method of payment  
13 for the doctor's visit, only how they were paying for the  
14 prescription itself.

15 A. It's how the prescription was paid for at the pharmacy,  
16 yes.

17 Q. It also indicates where the pharmacy was that filled it,  
18 correct?

19 A. Yes.

20 Q. It indicates -- from your review it indicates smaller  
21 pharmacies and larger pharmacies.

22 A. I didn't drill down to that detail, sir.

23 Q. You saw that there were Rite Aid pharmacies, there were MNS  
24 pharmacies, things like that?

25 A. I saw that there were multiple pharmacies.

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Poremba - direct

1 Q. OK. Several hundred.

2 A. Again, I did not drill down into that detail.

3 Q. OK. That's something though if you were to do an analysis  
4 of the BNE data that was presented and that you testified to,  
5 that's something that could be done if you were to pull all  
6 that data and collect it.

7 A. Correct.

8 MR. GOSNELL: One moment, your Honor.

9 Nothing further, your Honor.

10 THE COURT: Anything else?

11 MR. DISKANT: No, your Honor. Thank you.

12 THE COURT: Thank you, sir. You may step down.

13 (Witness excused)

14 THE COURT: Call your next witness, please.

15 MS. CUCINELLA: The government calls Mr. Poremba.

16 MICHAEL POREMBA,

17 called as a witness by the government,

18 having been duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MS. CUCINELLA:

21 Q. Good morning, Mr. Poremba.

22 A. Good morning.

23 Q. Where do you work?

24 A. I work at a company called Practice Fusion.

25 Q. What is Practice Fusion?

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Poremba - direct

1 A. Practice Fusion is a provider of on-line medical records  
2 maintenance for physicians.

3 Q. When you say on-line medical records, what do you mean?

4 A. It's a web-based service that allows doctors, medical  
5 practices to maintain medical records on a cloud-based computer  
6 system.

7 Q. Do physicians have to pay for this service?

8 A. They do not. The service is free for physicians to use.

9 Q. For how long has Practice Fusion been in business?

10 A. Practice Fusion was founded back in 2006.

11 Q. And for how long have you worked at Practice Fusion?

12 A. I joined Practice Fusion in 2011, so about five years ago.

13 Q. What is your job at Practice Fusion?

14 A. I'm director of data architecture, that's my role.

15 Q. What does that mean?

16 A. I help programmers to design and implement data structures  
17 to store medical data in the on-line medical records system.

18 Q. Approximately how many healthcare providers use Practice  
19 Fusion as of today?

20 A. On a normal business days we will have tens of thousands of  
21 healthcare practitioners using the system to maintain medical  
22 records.

23 Q. Is that nationwide?

24 A. Yes, the users are across the country.

25 Q. What kind of records would a physician be able to maintain

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Poremba - direct

1 or upload into the Practice Fusion platform?

2 A. The system allows physicians to maintain a variety of  
3 things about a patient and the care that they give to the  
4 patient. For example, the general patient information, their  
5 name, their birth date, their Social Security number, these  
6 types of things are recorded in the foundation of who the  
7 patient is.

8 In addition, they would keep track of a patient's  
9 medical history through the interview. They could maintain a  
10 history of even their family members for diseases, for  
11 instance, that might be inherited.

12 The doctor can also maintain notes in the system about  
13 the care that they provide to the patient. So, for instance,  
14 when they visit with the patient they can use it to transcribe  
15 information.

16 The system also allows doctors to submit orders for  
17 labs, medical labs, and receive those results back from the  
18 labs.

19 It allows doctors to communicate with one another; it  
20 has messages back and forth. It allows doctors to exchange  
21 medical records with one another.

22 And it allows doctors to maintain a list of  
23 medications that the patient is taking or has taken in the  
24 past. It allows the doctors to record prescriptions that  
25 they've made for these patients, and for those to be

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Poremba - direct

1 electronically transmitted, prescriptions to be transmitted to  
2 a pharmacy.

3 Q. I want to go through just a couple of those things that you  
4 mentioned. You mentioned records from other doctors and lab  
5 results. How does that work with the platform?

6 A. When a doctor, say a primary care physician, needs the help  
7 of a specialist, they're able to share the medical record that  
8 they have created for this patient with another physician who  
9 might not have any information about the patient. So, another  
10 user of Practice Fusion could receive those medical documents;  
11 the primary doctor's documents could be shared with another  
12 physician on the platform. Another way that this could happen  
13 is that a fax could be sent to another physician's fax number.

14 Q. And how does it work with respect to lab results?

15 A. With respect to lab results, a physician chooses to engage  
16 with a particular laboratory that they have a working  
17 relationship with, and they can fill out orders for medical  
18 tests, to take a sample from a patient, perform analysis of  
19 that sample, get the results back from that lab, and so the  
20 system allows the doctor to fill out the order and get those  
21 results back.

22 Q. Is that a secure system?

23 A. It is a secure system, yes.

24 Q. You also mentioned prescriptions. How does the platform  
25 keep track of prescriptions that a physician writes?

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Poremba - direct

1 A. When a physician wants to prescribe medication to a  
2 patient, first the medication itself is added to the patient's  
3 record. Next the prescription is filled up with some details  
4 around the dosage, the start and end date, the anticipated  
5 start date, the particular medication. So in one sense it's a  
6 form of an order that is created, and we record the  
7 prescription in the system that can then be either printed out  
8 or sent electronically to the pharmacy to be filled.

9 Q. Are there state regulations that sometimes prohibit doctors  
10 from sending prescriptions for certain medicines to pharmacies?

11 A. There are.

12 Q. So, for instance, in New York State, do you know if you can  
13 send a prescription for a controlled substance to a pharmacy  
14 through an e-script?

15 A. My understanding about New York regulation is that in the  
16 past it's been prohibited, and in the near future it will be  
17 required.

18 Q. You mentioned sending them automatically. Is there also a  
19 way to keep track of handwritten prescriptions in the Practice  
20 Fusion platform?

21 A. It would be up to the physician to do this, but there is a  
22 facility where any document associated with patient care can be  
23 scanned in and saved on-line and viewed later.

24 Q. Does the platform offer any other services relating to  
25 medications?

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1 A. Medications? For example, we have an alerting system that  
2 allows physicians to be warned if the medication that's being  
3 prescribed has interactions with other medications the patient  
4 might be on.

5 So, if a patient is already on a medication, or if a  
6 physician is prescribing more than one medication, those are  
7 analyzed by a knowledge-based system that will alert the  
8 physician as they're prescribing whether there are any  
9 warnings, health risks associated with the combination of  
10 medications. It's up to the provider then to decide what to do  
11 with those warnings.

12 Q. And in order for those alerts to appear, the medication has  
13 to be entered into the platform system; is that right?

14 A. That's right. So, for example, if it was scanned in as a  
15 document, it would not be incorporated into that alerting  
16 mechanism; it would have to be entered more explicitly as a  
17 medication.

18 Q. When a physician signs up for the Practice Fusion platform,  
19 how do they learn to use it?

20 A. We have a number of ways to gain familiarity with how the  
21 system works and how to use it. It's an on-line system, so  
22 doctors are offered articles, blog posts that describe various  
23 work flows that the physician might go through in the system.

24 So, for instance, the prescription work flow might  
25 have some pages that describe the usage of the system and also

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1 some screen shots that would illustrate what the sample section  
2 might look like.

3 In addition, we have videos on-line where someone is  
4 voicing over the video, instructing how to use the system and  
5 then illustrating that video, and you can actually see the  
6 transition of the screens as the worker is working through the  
7 system.

8 Lastly, there is a customer support team that is  
9 available on call to help answer questions that a physician may  
10 have, walk them through things that might not be documented  
11 through those other means, help them with any questions they  
12 might have about the system.

13 Q. You testified earlier that a doctor can keep track of notes  
14 in the system. What are some kinds of notes that a physician  
15 can enter into your platform?

16 A. That's right. Maintaining notes is a common usage of the  
17 system. A doctor could keep a number of different types of  
18 notes, for instance, logging a telephone call that they had  
19 with a patient, logging a very generic note, which is just a  
20 place to enter text.

21 Then there is a more structured note that's very  
22 commonly used in the industry called the SOAP note. A SOAP  
23 note is like the textual note except it's formed in four parts:  
24 The S section, the O section, the A section and the P section.  
25 SOAP. S stands for subjective. O stands for objective. A

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1 stands for assessment. P stands for plan. So this type of  
2 note is helpful for the doctor thinking through subjective,  
3 what did the patient report to me; objective, what did I  
4 observe of the patient that maybe wasn't described by  
5 themselves; assessment, meaning what is it that I conclude  
6 about the patient's condition; and plan, what do I intend to do  
7 to help the patient get past what has been identified as a  
8 health problem.

9 Q. Those notes that are entered into Practice Fusion, those  
10 are notes of the physician, not records of Practice Fusion; is  
11 that fair?

12 A. Correct, the Practice Fusion platform is used by doctors to  
13 maintain their notes; practice Fusion doesn't contribute to  
14 those notes.

15 Q. Does Practice Fusion keep track of a physician's activity  
16 within the platform?

17 A. One of the features in the system is to record actions  
18 taken by users in the system, yes.

19 Q. How does it do that?

20 A. When actions are taken on the system, it's implemented in  
21 such a way that there is an audit record taken of who performed  
22 what action at what time. And if there is a patient record in  
23 the context of that action, then which patient record.

24 Q. You called it an audit record. Is there another name that  
25 you have used to describe that audit record?

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1 A. We call that subsystem the activity feed.

2 Q. You also just mentioned that the audit record or the  
3 activity feed monitors who performs what action at which time  
4 and on which patient record. How do you monitor who performs  
5 the action?

6 A. Well, it's an on-line system, so users can access medical  
7 records for their practice on-line. They log into our system  
8 by hitting a specific URL and providing their user name, their  
9 unique user name that identifies them. They provide a  
10 password, which is the secret only they should know. And the  
11 first time they're using a specific browser they are challenged  
12 with a code that is sent to their mobile phone. Those pieces  
13 of information can be entered into the log-in screen, and then  
14 they are granted access to the medical records that they have  
15 permission to use.

16 Q. Does the software allow for a physician to set specific  
17 permissions for different individuals within their practice?

18 A. Yes. So, when the initial user, the first user, signs up  
19 for their practice, they are considered an administrator with  
20 master rights over the system. They can then go ahead, they  
21 are free to create additional users in the system who can  
22 access that same set of patient medical records, so, for  
23 example, a staff member or another physician. It's possible to  
24 configure the security level of those additional users to  
25 restrict them from certain activity on the system.

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1 Q. Let's turn back to the activity feed. How is the  
2 information about who is performing what action reflected in an  
3 activity feed?

4 A. The activity feed entries store the name of the user who  
5 performed the action, and also behind the scenes stores a  
6 unique identifier that is used to link back to that user's  
7 record.

8 Q. Can a physician who is using the Practice Fusion platform  
9 edit an activity feed?

10 A. No. Activity feed is by design not modifiable. From  
11 healthcare regulations, federal regulations through HIPAA, the  
12 audit log is by design meant to be a definitive record of who  
13 performed what action on the system.

14 So, if a database user were behind the scenes trying  
15 to modify the data store that makes up the activity feed, they  
16 would be prevented from either changing or deleting entries,  
17 and an alert would be sent to our security team.

18 MS. CUCINELLA: Ms. Joynes, can you please place on  
19 his screen what has been marked for identification as  
20 Government Exhibit 1212.

21 Q. Mr. Poremba, do you recognize this document?

22 A. So, these --

23 Q. Before you look at it, is this a document that reflects a  
24 typical activity feed that would be maintained by Practice  
25 Fusion?

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1 A. Yes. And these appear to be activity feed entries.

2 Q. And the user name on this and the patient names have been  
3 redacted; is that right?

4 A. I see, yes, they have been.

5 MS. CUCINELLA: The government offers Exhibit 1212.

6 MR. GOSNELL: No objection as a demonstrative aid.

7 THE COURT: It's offered as an exhibit, not as a  
8 demonstrative aid. Do you have an objection?

9 MR. GOSNELL: No objection.

10 THE COURT: Admitted.

11 By the way, folks, redacted means we have covered over  
12 the names of people as patients, which is confidential  
13 information, and you don't need it to decide this case.

14 MS. CUCINELLA: Ms. Joynes, if you can pull it up on  
15 the big screen and blow up the top section.

16 Q. Mr. Poremba, can you tell the jury what they are looking  
17 at?

18 A. So, this is a list of activity feed entries. On the  
19 right-hand side you will see some English text that describes  
20 an action that was performed.

21 This blown-up section here, the gray section now on  
22 the left-hand side would be where the user took an action.  
23 Their name would show up there. There is a textural  
24 description there that indicates what action that user took.  
25 And there is a little bit of contextual information on the

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1 right-hand side. The grayed-out portion would be the patient's  
2 name. Then just to the right of that it gives a little bit  
3 more context as to what information in the medical records  
4 was -- the subject or the action that the user took.

5 Q. Can we walk through a couple of these, and can you explain  
6 to us what it means, what the action that's reflected in the  
7 activity feed means.

8           Turning to the first one, updating an existing SOAP  
9 note chart for, as you said, that would presumably be a  
10 patient's name, date of service 6/24/2014.

11 A. Yes. The updated and existing SOAP note, chart note,  
12 refers to a user taking action on a note that already exists in  
13 the system, meaning it had been created sometime in the past.  
14 The user is accessing that SOAP note and has decided to change  
15 it by altering, for example, some of the text, maybe changing  
16 that date of service. There are some other pieces of  
17 information associated with the SOAP note that would  
18 potentially be modified and that would then generate this  
19 event.

20           The patient's name would appear there on the  
21 right-hand side. And the "with date of service" indicates the  
22 date of the patient's encounter that the doctor would have been  
23 recorded in chair chart note.

24 Q. And for updated a diagnosis, the second entry on this  
25 sample?

G397MIR1

Poremba - direct

1 A. Yes, updated a diagnosis, again this would have been a  
2 diagnosis the doctor had previously recorded associated with  
3 the patient's medical record and medical history.

4 Updated means something about that diagnosis was  
5 modified. Diagnosis record includes, for instance, a start  
6 date and an end date and some other fields. So one of those  
7 fields would have been modified on the existing diagnosis.

8 (Continued on next page)

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Poremba - direct

1 BY MS. CUCINELLA:

2 Q. Is it fair to say that when the activity feed reflects the  
3 word updated, it means something has been modified?

4 A. Yes.

5 Q. Turning to the next entry, started a new SOAP chart note  
6 for date of service, what does it mean to start a new note?

7 A. If the patient medical record contained one SOAP note prior  
8 to this action, after the action the user would have two SOAP  
9 notes. So it's a matter of creating or adding a new SOAP chart  
10 note to an existing patient medical record.

11 Q. And going down a little bit further, what does it mean to  
12 delete a document?

13 A. Delete a document. So a document, so for instance the  
14 example we had before was a manual prescription, that could be  
15 scanned into the system and uploaded and associated with a  
16 patient. Documents can be flagged for deletion, meaning  
17 they're no longer visible to the user.

18 Q. What does it mean to sign an existing SOAP chart note?

19 A. A common practice is for doctors once they're finished  
20 documenting a patient encounter is to mark it as completed.  
21 Signing activity records the user who performed the signing,  
22 thereby taking ownership for or approving the documentation  
23 associated with that chart note. It records the date and time  
24 that that signing took place. And once the signing is  
25 completed, the chart note is then no longer modifiable. It can

G39LMIR2

Poremba - direct

1 be amended with additional comments, but it's from that point  
2 on cannot be modified in our system.

3 Q. Once a chart note or another document has been signed as  
4 the term is used in your platform, can it then be deleted?

5 A. It cannot be. A signed note cannot be deleted.

6 Q. Finally at the bottom it says inserted a medication. What  
7 does it mean for something to be inserted into a medical  
8 record?

9 A. The medical record, again, contains a list of the  
10 medications that patient was on. This would be adding a  
11 medication that wasn't on the record before. So if a patient  
12 had one medication listed, after inserting a medication it  
13 would have two medications on their record.

14 Q. After a note has been signed, can you insert anything  
15 additional into that SOAP note?

16 A. You cannot modify the medications associated with a SOAP  
17 note after it has been signed.

18 Q. So once it's been signed, nothing can be changed?

19 A. Correct.

20 Q. Or deleted?

21 A. Correct.

22 MS. CUCINELLA: One moment.

23 Nothing further.

24 MR. GOSNELL: May I inquire, your Honor?

25 THE COURT: Yes.

G39LMIR2

Poremba - cross

1 CROSS-EXAMINATION

2 BY MR. GOSNELL:

3 Q. Good morning, Mr. Poremba.

4 A. Good morning.

5 Q. I'm Wayne Gosnell. I represent Dr. Mirilishvili. We  
6 haven't met before, right?

7 A. Correct.

8 Q. You work for Practice Fusion?

9 A. That's right, I work for Practice Fusion.

10 Q. How long have you worked for Practice Fusion?

11 A. Since August of 2011. It's about four and a half years.

12 Q. And what is your position again with Practice Fusion?

13 A. I'm director of data architecture.

14 Q. You're the head of data architecture?

15 A. That's right.

16 Q. And part of what's involved with data architecture is kind  
17 of the back end computing for Practice Fusion?

18 A. That's right.

19 Q. It's not something that a user of Practice Fusion would  
20 typically see?21 A. The data involves data that the user would -- we store the  
22 data the user would see, as well as other data that is not  
23 visible to the user.24 Q. Things like the activity log on a typical matter are not  
25 viewable by the user?

G39LMIR2

Poremba - cross

1 A. We have reports within the system which are available to  
2 the users to see the activity trail for their practice.

3 Q. Are those the activity feed within a chart?

4 A. The actions that a user takes throughout the system are  
5 recorded in the activity feed. The reports shows a listing of  
6 the activities that a user has performed, or the activities  
7 associated with a patient performed by any user, or all of the  
8 activity across the practice.

9 Q. And the point behind Practice Fusion or the structure of  
10 Practice Fusion is it's a cloud based computing system,  
11 correct?

12 A. Correct.

13 Q. And it's something that you try to make as user friendly as  
14 possible?

15 A. We try to make it as user friendly as possible.

16 Q. You understand, obviously, that certain people have  
17 different familiarity with computers and with computing in  
18 general?

19 A. Yes.

20 Q. There's some people that are very fluent in it and some  
21 people that are Luddites?

22 A. Correct.

23 Q. You said there were different ways to kind of learn how to  
24 use Practice Fusion?

25 A. Yes. We offer a number of ways to learn about Practice

G39LMIR2

Poremba - cross

1 Fusion.

2 Q. Online videos, customer support, things like that?

3 A. That's right, yes.

4 Q. You would agree it's harder for people who aren't as  
5 familiar with technology to use Practice Fusion?

6 A. Yes.

7 Q. Now, you also said it's a secure platform for medical  
8 records?

9 A. Yes.

10 Q. So if a doctor or if a user, an initial administrative  
11 user, is setting up a Practice Fusion account for his practice  
12 and he inserts notes, Practice Fusion doesn't actually have  
13 access to those notes, correct?

14 A. Ask your question another way.

15 Q. Sure. Do you actually have access to the medical records  
16 themselves on Practice Fusion?

17 A. In maintenance of the system, Practice Fusion employees  
18 need to have access to databases, for example, that store the  
19 information. Very few number of employees are granted access  
20 to the medical records, but some employees are granted access  
21 to view records in order to support and maintain the system.

22 Q. And that's only for supporting and maintaining. They're  
23 not allowed to go on and look through people's medical records?

24 A. That is strictly prohibited.

25 Q. Because medical records are supposed to be maintained

G39LMIR2

Poremba - cross

1 securely?

2 A. Absolutely.

3 Q. And in terms of the user, the Practice Fusion user who sets  
4 up an account, the initial user you said is an administrator?

5 A. Yes. They're initially created with administrative level  
6 privileges, that's right.

7 Q. And they're allowed through the program to start other  
8 users as part of the program?

9 A. Yes, that's true. They can add additional users, give them  
10 a password, and share that password with them.

11 Q. Sorry for interrupting. So for each person they were to  
12 create a new user name for, that person would have to accept  
13 the EHR license agreement, correct?

14 A. Yes.

15 Q. And that's a code that would be found on the activity feed  
16 that you testified about?

17 A. There's an event around acknowledging the user license  
18 agreement.

19 Q. That would reflect that that person had been added as a  
20 user to -- under that account for Practice Fusion?

21 A. Yes.

22 Q. And if you were then -- and then once that person is added  
23 as a user, Practice Fusion, the activity feed would track any  
24 type of activity that that additional user did so long as they  
25 did it under their user name?

G39LMIR2

Poremba - cross

1 A. Yes. There are a few hundred types of activities that it  
2 would record.

3 Q. Can you just generally, very generally tell us what  
4 categories of information are captured in the activity feed?

5 A. Oh, there are events such as log-in and log out. There's  
6 no patient associated with that. The action that is recorded  
7 would be that the user logged in at a certain date and time.  
8 There's the creation and editing of all subparts of the medical  
9 document. What do I mean? An example would be the chart  
10 notes, creation of diagnoses, editing of existing  
11 prescriptions. Faxing information to another provider. I  
12 don't have comprehensive list of categories, but those are some  
13 examples.

14 Q. That's fine. Just generally.

15 Now, the Practice Fusion, when somebody is going to  
16 Practice Fusion itself as a user, they don't see the kind of  
17 Excel sheet that we had up there on the screen, right?

18 A. That's right.

19 Q. They see a user interface, correct?

20 A. They do see a user interface, correct.

21 Q. There's like a home page to the Practice Fusion?

22 A. There is a home page, yes.

23 Q. And within Practice Fusion, then if a user wanted to access  
24 a particular patient's chart, they would go to kind of a menu  
25 on the left-hand side, they would click chart, and then they

G39LMIR2

Poremba - cross

1 would be taken to a search screen?

2 A. That's right.

3 Q. And when they went to the search screen, if they typed in  
4 the name of the patient, kind of a pop-up would pop up with  
5 that particular patient's name and then they could click  
6 through and see the chart, correct?

7 A. That's right.

8 Q. Now, if there are patients who had the same name but  
9 different identifying information, such as a different date of  
10 birth, and you were to type in the same name in the search  
11 category, you would see both of those names, correct?

12 A. Offhand I don't remember the pop-up and how it shows the  
13 search results. It may include for instance, for example, the  
14 birth date. It may not. I don't recall.

15 Q. Are you able to search by birth date?

16 A. I don't recall the search functionality.

17 Q. OK. But once you saw, once you clicked through to the  
18 patient's chart, you would see the entire chart of the patient?

19 A. That's right. Once you select that patient chart, you  
20 would be able to examine other details, for example, the  
21 patient birth date.

22 Q. And you'd be able to see the entire patient chart?

23 A. If you have adequate permissions, yes.

24 Q. Let's talk about that for just a moment. You said that  
25 there are different permissions that an administrator can give

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Poremba - cross

1 to different users?

2 A. Correct.

3 Q. You don't know whether or not that was done with  
4 Dr. Mirilishvili's account, do you?

5 A. I have no idea.

6 Q. So you don't know whether or not any particular user had  
7 full or incomplete access to the charts?

8 A. Correct.

9 Q. Let's assume though that you have -- you're the  
10 administrator logging in, you have full permission to see  
11 everything. If you were to click through to the patient's  
12 chart, you would see the entire chart?

13 A. The entire chart. There would be no hidden portion that  
14 would be -- the user would be not permitted to see.

15 Q. And once you're inside the patient chart, you said that one  
16 of the things that a user can do, assuming they have  
17 permission, is they can enter an encounter note or a SOAP note,  
18 as you said?

19 A. A user with administrative level access would be definitely  
20 able to create a chart note.

21 Q. I guess for the rest of my questions, let's just assume  
22 that the user has permission to do all these things.

23 A. Very good.

24 Q. I'm asking generally if you can do these things.

25 A. Perfect.

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Poremba - cross

1 Q. So one of the things a user can do, assuming he has  
2 permission, is he can start a SOAP note?

3 A. Correct.

4 Q. Can we bring up Government Exhibit 205. While he's doing  
5 that, I'm going to ask a couple questions about that.

6 You said on direct examination that starting a new  
7 SOAP chart note, that entry occurs if the patient already had a  
8 SOAP note entered.

9 A. Please repeat your question.

10 Q. On direct examination, when you were looking at the Excel  
11 sheet, one of the entries was started a new SOAP chart note for  
12 a particular patient on a particular service date, and you  
13 indicated that that meant that the patient already had an  
14 existing SOAP note?

15 A. Maybe you misunderstood my comment.

16 Q. OK. What does it mean when it says started a new SOAP  
17 chart note?

18 A. That event should be saved in the activity feed when a new  
19 soap note is added to the patient chart.

20 Q. OK. Let's look now at Government Exhibit 205. You said on  
21 direct examination that one of the things a user can do is they  
22 can print out the chart; is that correct?

23 A. There is an ability to print out the chart, correct.

24 Q. And I know you're not familiar with this particular  
25 patient, but is this how it looks when you print out a patient

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Poremba - cross

1 chart?

2 A. Frankly, I'm not familiar with the printout.

3 Q. OK. All right. Then we'll take this down. You've never  
4 printed out a chart?

5 A. I have not printed out a chart.

6 Q. Now, there are also, in terms of new patient charts, there  
7 are places you can input demographic information for a patient,  
8 correct?

9 A. Correct.

10 Q. Places you can input the patient's contact information,  
11 address, things like that?

12 A. Correct.

13 Q. And there's also -- there's an activity code that's  
14 associated when a new patient is entered into the system?

15 A. Correct. There's an activity feed entry for when a new  
16 patient is entered into the system.

17 Q. And that activity feed is inserted name as a new patient,  
18 correct?

19 A. I'm not familiar with the exact English text, but that  
20 sounds plausible.

21 Q. And since you've been at Practice Fusion, you understand  
22 that some of the codes at Practice Fusion have changed over  
23 time?

24 A. It's true that the activity feed entries evolve as a  
25 product evolves.

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Poremba - cross

1 Q. They've gotten a little more specific as your product has  
2 gotten more sophisticated?

3 A. The changes come from a variety of reasons and some of them  
4 are expanding the capabilities, adding new capabilities to the  
5 system, adding clarification where it might not be clear.

6 Q. So as you refine your system, you change or you update your  
7 activity codes and what they mean?

8 A. The changes are -- there are changes but they're intended  
9 to be fairly minor, meaning the gross meaning of the event is  
10 not meant to change over time. If a behavior in the system is  
11 significantly modified, I would expect a new activity feed  
12 entry would be created rather than modifying an existing one.

13 Q. So, for example, when you began working at Practice Fusion,  
14 there was an activity code that was associated with a user  
15 accessing a chart, just accessing?

16 A. I'm not familiar with the historical form of the activity  
17 feed of all of the activity feed entries.

18 Q. That particular type of entry, so and so accessed a chart,  
19 is no longer an activity event that's used by Practice Fusion?

20 A. I'm not familiar with the changes that have happened to  
21 that particular activity event.

22 Q. You don't know if that was used and you don't know if it's  
23 still used?

24 A. Correct.

25 Q. Now, if a user is creating a SOAP note or an encounter

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Poremba - cross

1 note, if there are multiple users on an account, assuming they  
2 have permission to do so, there are different users can create  
3 a SOAP note?

4 A. Correct.

5 Q. So, for example, if a physical therapist was given  
6 permission to create SOAP notes, that user would have the  
7 ability to do so?

8 A. Correct.

9 Q. And the administrator would have the ability to review  
10 those SOAP notes?

11 A. Correct.

12 Q. And the administrator would have the ability to sign those  
13 SOAP notes?

14 A. Correct.

15 Q. And once signed, they're permanent on the system?

16 A. They're not modifiable once signed.

17 Q. It can't be deleted, can't be modified, can't be updated?

18 A. It can be amended.

19 Q. You can amend it or you can actually add an addendum as  
20 well, correct?

21 A. That's right.

22 Q. That would show up as a new type of activity log?

23 A. Correct.

24 Q. You mentioned that there are alerts that occur with if  
25 there are, for example, drug interactions, there will be alerts

G39LMIR2

Poremba - cross

1 that occur?

2 A. Correct.

3 Q. There can be?

4 A. There can be alerts. That is one of the features of the  
5 application is to provide alerting.

6 Q. That's based upon kind of your back end system, your  
7 knowledge based system of just information that you have  
8 generally about drugs interacting with one another?

9 A. It's actually another company that provides us that  
10 information. It's not knowledge that Practice Fusion  
11 maintains.

12 Q. And it's something that's automatic?

13 A. It is automatic.

14 Q. So if a doctor or a user were to put in two prescriptions  
15 that had some type of interaction, whatever it was, an alert  
16 would be generated?

17 A. If the system has an alert for that combination of  
18 medications for that patient's criteria, an alert would be  
19 shown to the user.

20 Q. But it would be ultimately up to the doctor or up to the  
21 user to determine what the course of treatment is, right?

22 A. Correct. The alert does not prevent the doctor from going  
23 ahead and proceeding past the alert.

24 Q. Now, if a SOAP note chart is created by one user, let's say  
25 a physical therapist, and the SOAP note chart is saved and but

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Poremba - cross

1 not signed yet and there are alerts that are associated with  
2 that SOAP note chart, the way the alerts work is they're kind  
3 of these little pop-ups at the top of the screen, right?

4 A. Yes. They're visible to the user in kind of an obvious  
5 fashion.

6 Q. And they have -- they're kind of a yellow background?

7 A. Highlighted in yellow.

8 Q. And there's a little X box on -- check mark or X on the  
9 right-hand side?

10 A. I believe there is and this allows the user to respond to  
11 the alert.

12 Q. And by -- that's acknowledging that they've clicked the box  
13 and they've seen the alert, right?

14 A. Correct.

15 Q. It doesn't necessarily mean they read it; they just saw  
16 there was some box up there?

17 A. They can choose to take action on the alert. We record  
18 what action they took.

19 Q. That would also update the chart?

20 A. There is a log of the alert responses.

21 Q. That would also update the chart if you were taking out the  
22 alerts?

23 A. I'm not familiar with the behavior of the chart update  
24 mechanism being associated with alerts.

25 Q. You don't know one way or the other?

G39LMIR2

Poremba - cross

1 A. I don't know one way or the other.

2 Q. Now, if there is a user who created the SOAP note chart  
3 that has the alerts and saves it and a second user logs in and  
4 views that SOAP note chart, the alerts are going to pop up for  
5 the second user as well?

6 A. I'm not familiar with what would happen for the second  
7 user. I would expect so.

8 Q. OK. And if the second user were to X out one of those  
9 alerts, that would also qualify as an update, correct?

10 A. I'm not familiar with if that would qualify as an update to  
11 the SOAP note.

12 Q. You don't know either way?

13 A. Correct.

14 Q. Just the fact that a second user is viewing the alerts and  
15 is now being associated with that SOAP note as having access to  
16 that SOAP note, that updates the chart as well, doesn't it?

17 A. When the second user views the SOAP note, there would be an  
18 audit entry for them viewing the SOAP note. Is that what you  
19 meant?

20 Q. What I meant was the fact that there is now a second user  
21 who's associated with that SOAP note, user who didn't create  
22 the SOAP note in the first instance has now seen the SOAP or  
23 has now accessed the SOAP note, that would reflect as an update  
24 on the SOAP note information?

25 A. There are separate audit events for viewing versus updating

G39LMIR2

Poremba - cross

1 the SOAP note.

2 Q. OK.

3 A. So if the second user merely viewed the SOAP note, I would  
4 not expect an update event.

5 Q. Have you ever tested that?

6 A. I have not tested that.

7 Q. So you don't know for certain whether that is or is not the  
8 case?

9 A. Correct. I would have to test it to confirm.

10 Q. Now, you also testified about that Practice Fusion allows a  
11 user to upload a document?

12 A. Correct.

13 Q. And when a user uploads a document, there is an activity  
14 entry that's made for that particular user, time, and which  
15 document it was that was uploaded?

16 A. That's right.

17 Q. And it also, if it's associated with a particular patient,  
18 that's going to reflect on the activity feed?

19 A. Correct.

20 Q. Now, if -- going back to what we were talking about  
21 earlier, if you have two patients with the same name --

22 A. Yes.

23 Q. -- for the activity feed, does it just reflect the name of  
24 the patient on the kind of substantive summary?

25 A. The visible summary lists just the name. However, when a

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Poremba - cross

1 user clicks on that name, it goes to that patient's record. So  
2 it's very possible to discern exactly which of those two  
3 patients was accessed.

4 Q. But you can't do that from the Excel sheet that was up  
5 there?

6 A. The Excel sheet does -- I don't believe there was enough  
7 information on the Excel sheet that you showed that would be  
8 allow you to discern which patient.

9 Q. OK. The Excel sheet that you reviewed with the government,  
10 that was just the full activity log, right?

11 A. Ask your question again?

12 Q. At any point did you review in any portion an activity log  
13 that was produced in this case, any portion? Not asking if you  
14 reviewed the whole thing.

15 A. During preparation for questioning, a subset of events were  
16 shown to me in order to get a better understanding of what the  
17 meaning was.

18 Q. You weren't able or you didn't try or weren't able to click  
19 through by looking at the patient name and going back to the  
20 event?

21 A. Correct.

22 Q. Now, you said that updating a SOAP note includes any type  
23 of change to the SOAP note?

24 A. Ask your question again?

25 Q. Sure. If the activity feed indicates that a SOAP note or

G39LMIR2

Poremba - cross

1 encounter note has been updated, all that means, all that you  
2 can glean from that activity log is that something has been  
3 changed on the SOAP note?

4 A. Correct.

5 Q. It could be that a typo was fixed?

6 A. That's correct.

7 Q. It could be a space was added, somebody had back spaced, it  
8 could be anything, correct?

9 A. Correct.

10 Q. There's no way for you to see from the activity log what  
11 type of change was made at all?

12 A. Correct.

13 Q. That wouldn't be something that you as the director of data  
14 architecture would be able to show?

15 A. Ask your question another way.

16 Q. That's not something that you as the head of the data  
17 architecture at Practice Fusion, that's not something that you  
18 would be able to know based on looking at the activity log?

19 A. Correct, not through looking at the activity feed.

20 Q. Now, in terms of uploading documents, when you upload a  
21 document, there's a notation on the activity feed that a  
22 particular document was uploaded for a particular patient?

23 A. Correct.

24 Q. And it reflects which user uploaded the document?

25 A. Correct.

G39LMIR2

Poremba - cross

1 Q. And when we were talking about before when you go to  
2 Practice Fusion itself, you have kind of the home screen and  
3 you have charts on the left-hand side, right?

4 A. Correct.

5 Q. And there's also on the home screen, there's a different  
6 menu to get to the document section?

7 A. Correct.

8 Q. And if you go into the document section, there are kind of  
9 two menus that are there, there's the pending menu and the  
10 signed menu?

11 A. That sounds familiar.

12 Q. When a user first uploads a document onto Practice Fusion,  
13 it goes into the pending folder?

14 A. I believe that's the correct work flow, yes.

15 Q. And once -- and another user, let's say the administrator,  
16 can then sign the document?

17 A. Correct.

18 Q. And that's the same thing that we talked about earlier when  
19 you sign a document, it doesn't mean you're physically signing  
20 it. It means that you're memorializing, you're keeping it  
21 secure in the system?

22 A. Correct.

23 Q. And one of the things that can be done on the pending menu,  
24 there are let's say 50 documents to sign, there's a click all  
25 button, correct?

G39LMIR2

Poremba - cross

1 A. I'm not familiar with the click all functionality.

2 Q. You're not familiar one way or the other?

3 A. Correct.

4 THE COURT: Do you have much more with this witness?

5 MR. GOSNELL: Just a few more minutes, your Honor.

6 Q. There are also entries regarding if a user inputs a  
7 particular document, they can also provide details about the  
8 document, what type of document it is?

9 A. That's right.

10 Q. So, for example, they can indicate that it's a laboratory  
11 report?

12 A. That's an option.

13 Q. They can indicate that it's a referral?

14 A. That's an option.

15 Q. They can indicate that it's other?

16 A. Yes.

17 Q. Obviously, that's a general category, can be a lot of  
18 things, right?

19 A. Can be a lot of things.

20 Q. You can update that information and that would be reflected  
21 on the activity feed?

22 A. Correct.

23 Q. I think the final area I want to get into is with  
24 prescriptions. You said that there would be an activity log  
25 for when a prescription was entered into a patient's chart?

G39LMIR2

Poremba - cross

1 A. Correct.

2 Q. And there would be an activity log for when if a provider  
3 sent a prescription to a pharmacy?

4 A. Electronically, electronically sent a prescription.

5 Q. That would be an e-prescription?

6 A. Correct.

7 Q. That was not, to your knowledge, that was not something  
8 that was able to be done in New York State for controlled  
9 prescriptions in 2013, 2014?

10 A. To the best of my knowledge that's right.

11 Q. And if a provider wanted to memorialize that there was an  
12 oxycodone prescription, a controlled substance prescription  
13 that he wrote, he could upload that into the document area,  
14 sign it, and it would be in Practice Fusion?

15 A. Yes. That would be a viable approach for a prescription  
16 that was written and not being able to be electronically sent.

17 MR. GOSNELL: One moment.

18 Q. Going back to the alerts very quickly, you said there are  
19 alerts for drug interactions?

20 A. There are.

21 Q. Are there alerts for immunization records or the patient  
22 needs to be immunized?

23 A. I'm not familiar with that subsystem.

24 Q. Are there -- do you know what other alerts there are one  
25 way or the other, other than drug interactions?

G39LMIR2

Leonard - direct

1 A. No, not at this moment.

2 MR. GOSNELL: Nothing further, your Honor.

3 THE COURT: Any redirect?

4 MS. CUCINELLA: No redirect, your Honor.

5 THE COURT: Thank you. You may step down.

6 (Witness excused)

7 THE COURT: Time for us to take a break. Don't  
8 discuss the case. Keep an open mind.

9 (Recess)

10 THE COURT: OK. Get comfy. There's another hour this  
11 morning.

12 You're still under oath, sir.

13 You may continue your examination.

14 DAMON LEONARD, resumed.

15 DIRECT EXAMINATION (cont'd)

16 BY MS. CUCINELLA:

17 Q. Good morning, Mr. Leonard.

18 A. Good morning.

19 Q. We left off yesterday and you talked about how you had been  
20 hired to work at the clinic; do you recall that?

21 A. Yes.

22 Q. Do you recall when you started to work at the clinic?

23 A. October 2013.

24 Q. What were your responsibilities when you first started at  
25 the clinic?

G39LMIR2

Leonard - direct

1 A. Responsibilities were to learn everything from Jomaris  
2 Javier, maintain the clinic, clean up, run errands, park the  
3 doctor's car occasionally.

4 Q. You testified that your responsibility was to learn  
5 everything from Jomaris Javier?

6 A. Yes.

7 Q. What do you mean by that?

8 A. Learn all the BS that she was taught. So basically was to  
9 upload information, urinalysis reports, take IDs, scan  
10 paperwork.

11 Q. And did Jomaris tell you why she was teaching you those  
12 things?

13 A. Yeah, she told me. She said that's the way the doctor  
14 wanted me to do the work. That's the way she was taught.  
15 That's the way I was supposed to be taught, that way.

16 Q. When a patient came in for a visit, what were you expected  
17 to do?

18 A. At that time, I was just helping out at the time. My job  
19 was to just scan all documents and take the patient's ID and to  
20 also let them know about how much it costs per visit.

21 Q. Was Jomaris at that time responsible for preparing the  
22 paperwork the doctor would get?

23 A. Yes.

24 Q. Can you tell the jury what paperwork the doctor would get?

25 A. Yes. The first initial visit required MRI, referral, a

G39LMIR2

Leonard - direct

1 copy of your ID, and the receipt for the payment receipt.

2 Q. Did there come a time when that became your responsibility?

3 A. Yes, after Jomaris Javier was fired.

4 Q. And that paperwork, was it given to the doctor in hard copy  
5 or did you upload it into the computer?

6 A. Both. It was hard copy and it was uploaded.

7 Q. How did that paperwork change for a follow-up visit?

8 A. The follow-up visit only required the receipt, the PMP --  
9 the PMP is a prescription monetary program -- and your  
10 urinalysis report.

11 Q. When you say the PMP, what were you supposed to do with  
12 respect to the PMP?

13 A. The PMP was supposed to be uploaded by your name and once  
14 you program the name inside the computer, it would pop up all  
15 information, all narcotics that you took in the past or you're  
16 taking presently.

17 Q. Mr. Leonard, do you know what an override is?

18 A. Yes.

19 Q. How do you know what an override is?

20 A. An override is basically --

21 Q. I'm going to stop you for a second. My question was how do  
22 you know what an override is?

23 A. Yes. From Jomaris Javier. She taught me about that.

24 Q. Can you tell the jury what an override is?

25 A. An override is basically a patient that comes in, if he

G39LMIR2

Leonard - direct

1 gets impatient for waiting, Jomaris says she'll override. Or  
2 if your urinalysis report is not good, what she will do, last  
3 month, if the urine was good, she'll just switch it. She put  
4 that paperwork there from last month and last month's  
5 urinalysis report there for the present visit this month.

6 Q. Why would Jomaris -- do you have an understanding of why  
7 Jomaris would do this?

8 A. Yes.

9 Q. What is that understanding based on?

10 A. She would do it --

11 Q. I'm going to stop you again. My question is what is your  
12 understanding based on?

13 A. Basically so that way she wouldn't get in trouble with the  
14 people that was outside.

15 Q. Is that something Ms. Javier said to you?

16 A. Yes.

17 Q. OK. So tell the jury again why would Ms. Javier do the  
18 overrides?

19 A. She would do the overrides only because the fact that she  
20 didn't have no problems with the people outside and also just  
21 to keep the numbers up, just to keep the numbers up for the  
22 doctor. It wasn't really too much of nothing else. She would  
23 get a bonus for that. She'll get a couple dollars from the  
24 people outside.

25 Q. When you say a couple dollars from the people outside, tell

G39LMIR2

Leonard - direct

1 the jury what you mean?

2 A. Sometimes it varies. Sometimes some people come in and  
3 they'll hand \$50 in an envelope or envelope or it could be  
4 \$100, depending on what they wanted to give.

5 Q. You also mentioned keeping the numbers up. What do you  
6 mean by that?

7 A. The doctor expected, the expectation of us at that time, we  
8 was told, we was asked he wanted 30 people per day.

9 Q. How did the doctor communicate this to you?

10 A. A number of different ways. Some days, most days after the  
11 end of the day, he would go, he would check his paperwork. He  
12 look at his numbers and he'll have a problem with that. If the  
13 number was under 30, he said something to you. What's the  
14 problem today? Why are we seeing under what I asked you to do?

15 And I'll explain to him, Doc, you threw some people  
16 out or some people didn't make it today. He didn't want to  
17 hear that. He didn't want to hear that. My job was and our  
18 job was at that time, I don't give a damn. Call people,  
19 whatever it may be, call them, get them in here. All right, no  
20 problem.

21 At that time, for me, all I cared about was giving him  
22 the numbers because ultimately I cared about my job. So  
23 whatever made him happy, I did.

24 Q. Mr. Leonard, did the doctor ever discuss with you the  
25 difference between insurance patients and cash patients?

G39LMIR2

Leonard - direct

1 A. Yes.

2 Q. Tell the jury about your conversations on that topic.

3 A. I was told that the difference between insurance and cash  
4 patients is he only want to see ten insurance patients per day.  
5 Cash patients were different. He wanted to see them in the  
6 morning first. That was the first thing. He didn't want to  
7 see no insurance patients early in the morning, meaning the  
8 start of the day. If you came in 9 o'clock, between nine and  
9 9:30, if you put an insurance patient there first, you had a  
10 problem. He had a problem. He let you know real quick. You  
11 know better than that. I don't want to see this patient. Cash  
12 patients first.

13 Q. Were there any other differences between cash patients and  
14 insurance patients that you noticed based on your work in the  
15 clinic?

16 A. I notice the fact that cash patients just, they just go  
17 first. That was all really. They just go first. They have  
18 preference. Those are who he wanted to see first, cash  
19 patients, no more, no less.

20 Q. Did both cash and insurance patients go to physical  
21 therapy?

22 A. The difference between that was insurance patients, they  
23 went to physical therapy because he had a chance, the insurance  
24 covered, covered the physical therapist, physical therapy.  
25 Cash patients, you wasn't required to go because they didn't

G39LMIR2

Leonard - direct

1 pay. They didn't pay. There is no way they pay, so they  
2 wasn't required to go.

3 Q. Did there come a time when that changed?

4 A. Yes.

5 Q. Tell the jury about that.

6 A. It changed with first our numbers, the numbers, they fell  
7 down. From 30 to 15 to 22. And the doctor, he called me in  
8 the office one day and he told me, says, I have a way where I  
9 think that this will work for everybody. I said OK. Let me  
10 hear it. He told me I'm going to push the visit up to \$300.  
11 He told me why. He says for one, the physical therapist. It  
12 costs a lot to have them in here. No problem. He says, well,  
13 the cash patients, we can get them to go in based on four times  
14 a month. We'll charge them \$25 per visit. That's where the  
15 other hundred dollars came in at. So it became from 200 to  
16 \$300.

17 Q. Mr. Leonard, was there a time that you had a conversation  
18 with the doctor about the Astramed clinic?

19 A. Yes.

20 Q. What was that conversation?

21 A. The fact that one day, we were slow that day and he asked  
22 me, he says, told me to come in. I came into his office. He  
23 told me did I recently hear the Terdiman situation.

24 Q. Do you have an understanding who Terdiman is?

25 A. Yes. He was another doctor located in the Bronx.

G39LMIR2

Leonard - direct

1 Q. Continue.

2 A. I told him yes. I didn't go into it. He went into it. He  
3 said, well, the first thing we need to do is start cleaning up  
4 the office, meaning get rid of these fools, these drug addicts,  
5 these drunks, whatever, bums, get them out of the office. So I  
6 said OK, OK, Doc. But in my head I said to myself how much can  
7 I get rid of them.

8 MR. MAZUREK: Objection.

9 THE COURT: I'm sorry?

10 MR. MAZUREK: Objection as to what he's saying to  
11 himself.

12 THE COURT: Overruled.

13 MR. MAZUREK: It's not spoken to the doctor.

14 THE COURT: Overruled.

15 (Continued on next page)

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G397MIR3

Leonard - direct

1 Q. You can continue.

2 A. And that was basically it. I said, OK, no problem, I'll  
3 find ways to get rid of people. So the only way we can get rid  
4 of people was not taking new people. So we explained that  
5 we're not going to take new people for a while, no problem, we  
6 didn't take new people.

7 Q. During your conversation with the doctor about Dr.  
8 Terdiman, did he show you anything?

9 A. Can you ask me that question again?

10 Q. Sure. When you were talking to the doctor about Dr.  
11 Terdiman and the Astromed Clinic, did he show you anything?  
12 Where were you when this conversation took place?

13 A. Oh, we were inside his office. Yeah, he just showed me --  
14 he showed me the newspaper article. He showed me that.

15 Q. What was that article about?

16 A. It was about Dr. Terdiman, that's all it was about.

17 Q. What about Dr. Terdiman?

18 A. That he was selling oxycodone pills to patients and he was  
19 in a conspiracy, that's what he showed me.

20 Q. You have testified about the doctor talking to you about  
21 wanting to get the numbers up. Did there come a time when you  
22 took steps to help get the numbers up?

23 A. Yes.

24 Q. What did you do?

25 A. My thing that I did was I just -- what I did was I just --

G397MIR3

Leonard - direct

1 I started just calling refills. My job, what he wanted me to  
2 do was whenever I looked at the schedule if it wasn't 30, I  
3 would get nervous, I would call people that had appointments  
4 five days earlier, or later, I'll call them in. I'll call  
5 them, come, they'd say my appointment is in five days, fuck it,  
6 just come. As long as it was cash, I didn't care, I did it.

7 Q. Did you also start bringing in your own patients?

8 A. That's another reason. Yes, I felt pressure. I felt  
9 pressure, so I felt that some of my family members weren't  
10 working at the time, I said, what the hell, everybody else is  
11 doing it, I will start bringing some of my family members, just  
12 to help the numbers go up.

13 Q. Who specifically did you ask to come in?

14 A. I had my nieces, my brothers, my sisters.

15 Q. And what specifically did you tell them to do?

16 A. Basically just I gave them an MRI report and I told them to  
17 read it, and I told them exactly what to go in there and do. I  
18 said this is what I did, you have to do the same. First thing  
19 you do is you go in there, put the money on the table, act like  
20 you have a problem with your lower back and that's it. Just  
21 answer the question, don't say too much, and that's it.

22 Q. Were you making money off this?

23 A. Yes, I was making some money off this, yes.

24 Q. How would you make money off this?

25 A. Well, they -- after they received the oxycodone

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Leonard - direct

1       prescription, I would send them to the pharmacy, and they would  
2       pick up their prescription, they will come back to me, and they  
3       will sell it to me, I will give them \$300 for it.

4       Q. Then what would you do?

5       A. I would sell it to the guy that I dealt with.

6       Q. Did you sell it always to the same person, or were there  
7       occasions where you sold it to other people?

8       A. I sold it -- on occasion I sold it to another person.

9       Q. How much money would you make off a bottle of pills?

10      A. Well, at the beginning, at the beginning it was only like  
11       12.50 per pill.

12      Q. Did it change over time?

13      A. Yes.

14      Q. How did it change?

15      A. Well, it went up to \$18, but that was when I sold my pills  
16       directly to Mr. Correa.

17      Q. And what profit did you make off a bottle of pills?

18      A. It varied. 1200, \$1300, \$1400, that was it. After cost  
19       you really only made like 3 or \$400, because at the time  
20       pharmacies were charging -- they was ballooning the numbers.

21       You can go to pharmacy, one pharmacy charges \$700, another  
22       charges \$800, some charge \$450. It varied like that. So after  
23       costs, paying the patient, paying for the doctor's fees, which  
24       was \$300, you amounted to like \$300. So what I learned was  
25       more people you had go, the more money you made. If you only

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Leonard - direct

1 had two people going today, you really only grossing about  
2 \$600.

3 Q. You testified that you sent in your family members.

4 A. Yes.

5 Q. Were those people that you then -- what did you do after  
6 your family members came in?

7 A. I don't understand.

8 Q. When your family members came in, did they get  
9 prescriptions from Dr. Mirilishvili?

10 A. Yes.

11 Q. What prescriptions did they get?

12 A. Oxycodone. At that time that was the only prescription he  
13 was giving, oxycodone. All the other prescriptions as far as  
14 muscle relaxers were e-script.

15 Q. And do you know specifically how many pills your family  
16 members would get?

17 A. Each patient would receive 90 pills.

18 Q. Did the doctor ever say anything to you about your family  
19 members coming in?

20 A. Well, one time he told me -- he told me that he spoke to my  
21 niece, because I guess he had a conversation, and I know he had  
22 a conversation because my niece came out and told me, yeah, the  
23 doctor knows I'm your niece. I didn't say too much to him, but  
24 he knew that was my niece.

25 Q. You also testified earlier that there were times when the

G397MIR3

Leonard - direct

1 doctor would kick out certain patients. Is that right?

2 A. Yes. That was only -- that was only after really basically  
3 after the Terdiman situation really. A lot of patients started  
4 getting kicked out for numerous reasons. One reason was for  
5 cash. You're going there, the visit was initially \$300. If  
6 you went in there trying it play games with him trying to say  
7 you only had \$200, he kicked you out. If you didn't follow  
8 your paperwork to the T, he kicked you out. And then also if  
9 he felt if you asked too much questions, the patient would come  
10 out, I would ask them what happened, and they would say he  
11 thought I was a cop. That's what they will say to me.

12 MR. MAZUREK: Objection. Move to strike. Hearsay.

13 THE COURT: Strike everything after the word yes.

14 MS. CUCINELLA: Coconspirator statement? Statement of  
15 a coconspirator?

16 THE COURT: Excuse me. You asked a leading question;  
17 he answered it yes; and everything else is stricken. Stop  
18 asking leading questions and find out a way to get it in  
19 otherwise.

20 Q. Mr. Leonard, what would happen when the doctor could kick  
21 out patients?

22 A. He would kick them out. After that they'll leave or, you  
23 know, he will tell them they can come back. Or sometimes like  
24 I said your paperwork is not right, meaning like, for instance,  
25 if he started asking you questions about your paperwork, and

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Leonard - direct

1 you didn't know, he'll tell you right in their face, look you  
2 right in your face, this is not your paperwork, what's going  
3 on, you know, seriously. Doctor that is my paperwork. No, do  
4 me a favor, leave, go get your actual MRI and come back.

5 Q. Did the patients ever say anything to you after they were  
6 kicked out?

7 MR. MAZUREK: Objection. Calls for hearsay.

8 THE COURT: That's a yes or no question. Did patients  
9 say anything to you?

10 THE WITNESS: Yes.

11 Q. What did they say?

12 MR. MAZUREK: Objection.

13 THE COURT: Sustained.

14 Q. Did there come a time when the doctor --

15 THE COURT: Do you went to come over here for a  
16 second.

17 (Continued on next page)

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G397MIR3

Leonard - direct

1 (At the side bar)

2 THE COURT: Your problem, Ms. Cucinella, is the word  
3 patients is so overinclusive. Not every patient of the  
4 doctor's is alleged by the government to have been a  
5 coconspirator, so I can't tell if that's coconspirator hearsay.

6 MS. CUCINELLA: Totally understood.

7 (Continued on next page)

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G397MIR3

Leonard - direct

1 (In open court)

2 BY MS. CUCINELLA:

3 Q. Mr. Leonard, did there come a time when the doctor asked  
4 you or Jomaris to verify MRIs?

5 MR. MAZUREK: Objection. Leading.

6 THE COURT: Overruled. An introductory question.

7 A. Yes.

8 Q. Can you tell the jury about that?

9 A. Well, this was basically -- basically it was after, really  
10 after the PMP started, really he started asking for that, and  
11 the Terdiman situation, he really started asking us --

12 THE COURT: Sir, can you slow down a little bit?

13 Because I'm having difficulty understanding you, and the court  
14 reporter has to take this down, so please slow down a bit.

15 A. OK. Yes, it was mainly after the PMP started, and when Dr.  
16 Terdiman went down. He called us in the office, and he just  
17 told us you got to start verifying each MRI. We agreed, no  
18 problem.

19 Q. What happened after that?

20 A. When patients would come in, you know, he would ask us did  
21 you verify. But it wasn't every, every MRI he asked us to  
22 sign. The only way he felt, well, did you verify this one?  
23 Yes, doc.

24 Q. For how long did that go on?

25 A. Until I got tired, and I told him I wasn't verifying no

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Leonard - direct

1 more -- wasn't putting my name on anymore MRIs. I told him he  
2 had to help out and do it.

3 Q. Why did you tell the doctor that?

4 A. Because I felt it's my name on the line, and he knows  
5 exactly what's going on. So, you know what, you're going to be  
6 a part of this too; I'm not just going to be the only one going  
7 down for this BS, so ...

8 Q. Mr. Leonard, did there come a time when the doctor fired  
9 Jomaris?

10 A. Yes.

11 Q. Do you know why he fired her?

12 A. Yes.

13 Q. How do you know that?

14 A. Because there was a phone call from --

15 THE COURT: How do you know the reason?

16 THE WITNESS: Because the pharmacist called and told  
17 me.

18 THE COURT: The pharmacist called and told you.

19 Q. Were you present when Jomaris was fired?

20 A. Yes.

21 Q. What happened when Jomaris was fired?

22 A. What happened was around 9:30, ten o'clock in the morning  
23 Frank from Ascan's Pharmacy called and asked to talk to the  
24 doctor. I told him the doctor is busy right now. I told him  
25 can I help him? He says --

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Leonard - direct

1 MR. MAZUREK: Objection. Calls for hearsay.

2 THE COURT: I'm sorry, we don't want to hear your  
3 conversation with the pharmacist. We don't want to hear that.  
4 OK? We want to hear what, if anything, you heard Dr.  
5 Mirilishvili say to Jomaris when he fired her. Did you hear  
6 what he said to Jomaris when he fired her?

7 THE WITNESS: No.

8 THE COURT: OK. Well, then let's move on.

9 Q. After Jomaris left, who worked in the office?

10 A. Just me and Augustine Cruz.

11 Q. Did you continue to do overrides?

12 A. No.

13 Q. Did you sell urine to patients?

14 A. No.

15 Q. Can you explain for the jury how it worked when a patient  
16 dropped off urine for a urine test.

17 A. The patients were supposed to drop their urine off ten days  
18 from their appointment slips. Each month, ten days before each  
19 visit you are supposed to drop off your urine. That's what you  
20 were expected to do every month. They will bring it in any way  
21 they could. They will bring in by hand from the street; some  
22 of them went inside the bathroom. Most of them came in with  
23 it.

24 Q. When they came in with the urine, what would happen?

25 A. They would come, they will fill out paperwork. They was

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Leonard - direct

1 instructed that the lab had to get paid for the work to get  
2 done, and they was instructed from me to go across the street  
3 and get a \$50 money order so the urine can get tested.

4 Q. When they dropped off urine specimens, was the doctor ever  
5 present?

6 A. Sometimes whenever we were slow. If we were slow, he was  
7 out there, yes. Because there are times -- we only took -- we  
8 only took urine after one o'clock in the afternoon. So I mean  
9 there was times we were slow, and the doctor would be sitting  
10 out there talking to me and, boom, the doorbell ring, I let  
11 them in, OK, we come to drop off urine, four or five people  
12 come at one time. They put the urine right on the table right  
13 there.

14 Q. Mr. Leonard, when you first started working at the clinic,  
15 what urinalysis lab were you using?

16 A. At the time we were using Empire Labs.

17 Q. Did there come a time when you switched labs?

18 A. Yes, only because Empire Lab refused to --

19 Q. I'm going to stop you. Did there come a time when you  
20 switched labs?

21 A. Yes.

22 Q. Why?

23 A. Because Empire Lab, they didn't want to work with us no  
24 more because they weren't getting paid.

25 MR. MAZUREK: Objection.

G397MIR3

Leonard - direct

1                   THE COURT: They didn't want to work with you anymore,  
2 period, end.

3 Q. Do you know what lab the clinic used after Empire?

4 A. Yes.

5 Q. I'm going to direct your attention to the summer of 2014.  
6 Do you recall -- I apologize, I didn't ask the follow-up  
7 question. What lab did the clinic use after Empire?

8 A. Aegis.

9 Q. I'm going to direct your attention now to the summer of  
10 2014. Do you recall an Aegis sales rep coming into the office?

11 A. Yes.

12 Q. Did he come in twice?

13 A. Yes.

14 Q. I want to talk to you about each of those times. Can you  
15 tell the jury what happened during the first time he came in?

16 A. Well, the first time he came in he brought in a list of  
17 names -- I don't know how many was on there -- where he brought  
18 a list of names. He came in, he asked to talk to the doctor.  
19 He spoke to the doctor briefly. The doctor came out. After  
20 that the doctor called me in the office; he showed me a list of  
21 names and told me I want to get rid of them right now.

22 Q. What happened the second time the Aegis rep came?

23 A. The second time he came, he just told us that he could no  
24 longer take --

25                   MR. MAZUREK: Objection.

G397MIR3

Leonard - direct

1                   THE COURT: Hang on. Hang on, please.

2                   I'm sorry but, ladies and gentlemen, I have to hear  
3 his answer before I can decide if you can hear it. OK? Thank  
4 you. Don't discuss the case. Keep an open mind.

5                   (Continued on next page)

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Leonard - direct

1 (Jury not present)

2 MS. CUCINELLA: Your Honor, I can ask a clarifying  
3 questioning did the doctor tell you what the Aegis rep said the  
4 second time.

5 THE COURT: Well, that wouldn't really solve the  
6 problem.

7 Can I hear the answer to the question? Because I  
8 don't know if it's hearsay or not. I'd like to hear the answer  
9 to the question. That's why I sent the jury out of the room.

10 A lot of things people say out of court are not  
11 offered for the truth of the matter asserted or offered for  
12 some other reason, like to prove what a witness did, or what  
13 happened next, and those things aren't hearsay. So I'd like to  
14 hear what the answer to the question is.

15 Ask the question again, and then let him answer it.

16 Q. When the Aegis rep came to the office the second time, what  
17 happened?

18 A. He asked to speak to the doctor. I told him he was busy.  
19 When he got finished, he went in there. I don't know what the  
20 conversation was. When he came out, I said, Charles, is  
21 everything OK? He said, no. He said I can't take your  
22 business anymore. That's what he said to me. After that the  
23 doctor came in, he said, Damon, you heard, we're not going to  
24 be able to use this lab anymore; you're going to have to find a  
25 new lab, point blank.

G397MIR3

Leonard - direct

1                   THE COURT: OK, the objection is overruled. Bring the  
2 jury in.

3                   (Jury present)

4                   THE COURT: OK, folks, the objection is overruled.

5 BY MS. CUCINELLA:

6 Q. Mr. Leonard, was there a time when the Aegis rep came back  
7 a second time that summer?

8 A. Yes.

9 Q. What happened when he came back to the clinic?

10 A. Well, he came in, he asked to speak to the doctor. I asked  
11 him can I help him. He said I just want to speak to the  
12 doctor. I said no problem, the doctor is busy. When the  
13 doctor got finished, he went in. I didn't hear the  
14 conversation. I just know when he came out in ten minutes I  
15 asked him, Charles, is everything OK? He says, no, I just  
16 can't take your business anymore. No problem. That was it.

17 Q. Do you know what lab the clinic used after that?

18 A. Yes, ATS Labs.

19 Q. Is there anything different about that lab?

20 A. Other than the doctor, no.

21 Q. Did there come a time when the doctor fired Augustine Cruz?

22 A. Yes.

23 Q. Tell the jury what happened.

24 A. Well, over the weekend we had a real bad rain storm, and  
25 the office got bombarded, got flooded out. So, when the doctor

G397MIR3

Leonard - direct

1 came in, we explained to the doctor what was going on. He said  
2 we need to get ahold of the super. We couldn't get -- he asked  
3 Augustine.

4 MR. MAZUREK: Your Honor, on relevance grounds and  
5 hearsay.

6 THE COURT: The objection is overruled.

7 Q. You may keep going, Mr. Leonard.

8 A. OK. So we couldn't get in touch with the super. By the  
9 early afternoon we located the super, we told the doctor. The  
10 super came in, and at that time he was pissed off about the  
11 situation.

12 Q. When you say he was pissed off?

13 A. He was pissed off about the water coming into the office.

14 Q. Who do you mean?

15 A. The doctor, he was pissed off about the water coming in the  
16 office. So when the super came in, the doctor and Augustine  
17 Cruz met him, and he immediately went off on the super. He  
18 told the super --

19 MR. MAZUREK: Objection. 401, 403.

20 THE COURT: Do you want to come over here for a  
21 minute, please? I'm getting tired of having these side bars.

22 (Continued on next page)

G397MIR3

Leonard - direct

1 (At the side bar)

2 THE COURT: Why do I care about this?

3 MS. CUCINELLA: He gets into the altercation with the  
4 super, and he immediately fires the person who is working  
5 there, and he hires a patient who is waiting to see him to work  
6 security.

7 THE COURT: So what?

8 MS. CUCINELLA: So, he just hires someone who is  
9 supposedly waiting to see him and in chronic pain.

10 THE COURT: And that goes to prove what element of  
11 your case?

12 MS. CUCINELLA: It goes to prove that he knew the  
13 patients who were waiting to be treated were not actually there  
14 for medical treatment.

15 THE COURT: No, it doesn't. Leave it.

16 (Continued on next page)

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G397MIR3

Leonard - direct

1 (In open court)

2 THE COURT: Objection sustained.

3 BY MS. CUCINELLA:

4 Q. Did there come a time when the doctor hired Jomaris back?

5 A. Yes.

6 Q. Did the doctor tell you why he hired her back?

7 A. At the time, yes.

8 Q. My question -- sorry, go ahead.

9 A. Yes.

10 Q. What did he tell you?

11 A. Well, over the weekend it was his birthday and around the  
12 same time was Father's Day. She had gotten in contact with the  
13 doctor through his personal phone, wished him a happy Father's  
14 Day and happy belated birthday, and they talked about her kid.  
15 So when Monday came in, he told me he had spoken to her and  
16 that he was going to hire her back.

17 Q. What were her responsibilities when she came back?

18 A. Her responsibilities was to work -- her responsibilities  
19 was to deal with the physical therapy patients and take care of  
20 the urine.

21 Q. Did there come a time when she was fired again?

22 A. Yes.

23 Q. Do you know why?

24 A. Yes.

25 Q. How do you know why?

G397MIR3

Leonard - direct

1 A. Because she lied to the doctor.

2 THE COURT: Not why. How do you know why? Did  
3 someone tell you? Were you there in the room? How do you  
4 know?

5 THE WITNESS: Because I witnessed it.

6 THE COURT: Thank you.

7 Q. Tell the jury what happened.

8 A. There was a situation where the doctor came out to use the  
9 facility, use the bathroom, and Jomaris Javier was in the back  
10 with the refrigerator, the urine, where we put the urine at,  
11 where the urine is stored at. The refrigerator was opened. He  
12 asked her why is the refrigerator open. She proceeded to lie  
13 to him. And quickly what he did was he went right -- she told  
14 him that the physical therapist guy was in the refrigerator.  
15 He proceeded to go right to the physical therapy, ask him a  
16 question. The physical therapist didn't know what the heck he  
17 was talking about. He told him I didn't do that. From there  
18 he went right back to the back and told her she's fired because  
19 she lied to him.

20 Q. Did there come a time when you and the doctor had a  
21 conversation about it?

22 A. Yes.

23 Q. I am showing you what has already been marked for  
24 identification as Government Exhibit 442. It's 441. My  
25 apologies.

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Leonard - direct

1 MR. MAZUREK: Your Honor, I know you hate the side  
2 bars.

3 THE COURT: There will be no side bar.

4 MR. MAZUREK: But --

5 THE COURT: I'm done having side bars. I'm done  
6 having side bars.

7 MR. MAZUREK: This is an exhibit that we discussed  
8 earlier that we have an objection to.

9 THE COURT: You have a continuing objection. Have I  
10 ruled?

11 MR. MAZUREK: No.

12 THE COURT: Fine. Then when they try to introduce it,  
13 object to it, and I will look at it.

14 Q. Mr. Leonard, I just put an exhibit up on the counter for  
15 you. Do you recognize what that is?

16 A. Yes.

17 Q. You can open the bag. What is it?

18 A. It's the doctor's notebook.

19 Q. Did there come a time when he showed you that notebook?

20 A. Yes.

21 Q. Why did he show it to you?

22 A. He showed it to me because he wanted me to -- he wanted me  
23 to know what Jomaris was doing, and I guess --

24 THE COURT: What did he say to you when he showed it  
25 to you? What did he say to you?

G397MIR3

Leonard - direct

1                   THE WITNESS: What he said to me was -- really he  
2 didn't say too much to me about nothing. He just told me why  
3 he fired her, and this is what he got from her, so he knew all  
4 along what she was doing.

5                   THE COURT: OK, he didn't say much. I don't want him  
6 to guess about what was in the doctor's mind, so let's move on.

7 Q. Did he say anything specific about the letter?

8                   MR. MAZUREK: Objection.

9                   THE COURT: The objection is sustained. The whole  
10 issue is the letter. We will have to do this after lunch, so  
11 let's move on to an entirely new area. OK? Come on.

12 Q. Mr. Leonard, did there come a time when the clinic was  
13 robbed a second time?

14 A. Yes.

15 Q. Do you recall approximately when that was?

16 A. That was -- I think it was July or August of 2014.

17 Q. Were you at work when it happened?

18 A. Yes.

19 Q. Tell the jury what happened that day.

20 A. It was a slow day, slow day. I was told by the doctor to  
21 make calls because we didn't have any patients. I said, OK, no  
22 problem. I said do we start bringing in new? He said, yeah,  
23 we can do new. Because at that time we wasn't doing new; we  
24 were only doing follow-up on patients.

25                   OK. I got on the phone, made a few calls. A few new

G397MIR3

Leonard - direct

1 patients came in. And after that a patient came in, he rung  
2 the bell, I asked him can I help you? He says, yes, I'm a new  
3 patient. When I opened, buzzed the door, three other guys  
4 came, barged in right behind him.

5 Q. What happened after that?

6 A. They told us -- two guys -- one guy had a hammer, the other  
7 guy had a gun, and he told us don't move, the office is being  
8 robbed.

9 Q. What happened after that?

10 A. He told me to stand still. Actually at the time they told  
11 me to go behind the desk, still behind the desk. After that  
12 they took the doctor inside the office.

13 Q. Could you hear what went on inside the office?

14 A. Yes.

15 Q. And what did you hear?

16 A. Well, the robbers kept asking the doctor where is the  
17 fucking money. Then the doctor proceeded to tell them I don't  
18 have no money. What are you guys doing? I look out for your  
19 guys, take care of your families. I'm just a poor -- I'm an  
20 immigrant. That was all he said.

21 Q. Did the robbers take anything that you are aware of?

22 A. No.

23 Q. Changing topics, Mr. Leonard, while you were working in the  
24 office did you ever witness the doctor interact with any of the  
25 bosses or crew chiefs?

G397MIR3

Leonard - direct

1 A. Yes.

2 Q. Can you tell the jury what a boss or a crew chief is?

3 A. Well, a crew chief is just a guy who is in charge of the  
4 patients outside. Like, you know, he doesn't really come in  
5 much unless something is wrong, but he is just a guy that's in  
6 charge of his patients.

7 Q. And you said you saw the doctor interact with crew chiefs.  
8 What did you see?

9 A. Well, basically one in particular, name Ray Williams, every  
10 now and then he will come in and speak to the doctor, he will  
11 say, is the doc busy? No, he ain't busy. OK, he'll go in.  
12 Hey, how you doing, doctor? And they go and close the door.

13 MR. MAZUREK: Objection.

14 THE COURT: The objection is overruled.

15 MR. MAZUREK: Withdrawn.

16 Q. Was Ray Williams known to you by any other names?

17 A. Well, they called him Obama.

18 Q. After Mr. Williams would go in and speak with the doctor,  
19 did he come out and speak with you?

20 A. Not all the time, nope, not at all.

21 Q. Did he ever do that?

22 A. A few times he will come crack a joke here and there.

23 Q. Were you ever able to learn what the doctor and  
24 Mr. Williams were talking about?

25 MR. MAZUREK: Objection.

G397MIR3

Leonard - direct

1                   THE COURT: It's a yes or no question.

2 A. No.

3 Q. I'm showing you for identification -- it actually may  
4 already be in -- what is marked as Government Exhibit 4-D. Do  
5 you recognize this person?

6 A. Yes.

7 Q. Who is it?

8 A. There are two guys there.

9 Q. Who are the two people in the picture?

10 A. One is Abraham Correa, which is known as Buck and the other  
11 guy is Ray Williams known as Obama.

12 Q. Mr. Leonard, who is Tasheen Davis?

13 A. Tasheen Davis was one of Dr. Moshe's patients. Also she  
14 was one of the young ladies that I had assist me on taking  
15 patients to and from the pharmacy.

16 Q. Did you consider Tasheen Davis a crew chief?

17 A. Yes.

18                   MS. CUCINELLA: Just one moment.

19 Q. I am showing you on your screen what has been marked for  
20 identification as Government Exhibit 4-V. Do you recognize the  
21 individual in this picture?

22 A. Yes.

23 Q. Who is it?

24 A. Tasheen Davis.

25                   MS. CUCINELLA: The government offers 4-V.

G397MIR3

Leonard - direct

1 MR. MAZUREK: In objection.

2 THE COURT: Admitted.

3 (Government's Exhibit 4-V received in evidence)

4 Q. Mr. Leonard, that's Tasheen Davis?

5 A. Yes.

6 Q. When you said that you would have Tasheen assist you, what  
7 did you mean?

8 A. To and from the pharmacy. What I would ask her to do was  
9 assist me on -- if a patient was going out to Brooklyn to the  
10 pharmacy, I would ask her, OK, well, where are you going? I'm  
11 going to Brooklyn also. OK, can you do me a favor and run this  
12 patient out there for me, to the pharmacist?

13 Q. Did you pay her?

14 A. Yes, I paid her -- the only way I paid her was basically  
15 through gas or gave her money for lunch. I didn't even have to  
16 give her any money, just pay her gas.

17 MS. CUCINELLA: You can take that down, Ms. Joynes.

18 Thank you.

19 Q. Mr. Leonard, after Jomaris was fired the second time, did  
20 your salary increase?

21 A. Yes.

22 Q. What did it increase to?

23 A. 750.

24 Q. Were there ways for you to earn additional money at the  
25 clinic?

G397MIR3

Leonard - direct

1 A. I don't understand you.

2 Q. Did you sometimes get more money as part of your weekly  
3 paycheck?

4 A. Yes. If we had a good week, he will give me a bonus, \$100.  
5 Or, you know, if like the holidays are coming up, he will give  
6 me \$100 for that, go buy a gift or get a family a bigger  
7 turkey, stuff like that.

8 Q. When you say he, who do you mean?

9 A. The doctor.

10 Q. Mr. Leonard, how would you describe your relationship with  
11 the doctor?

12 A. Well, at that time it was pretty good; it was pretty good  
13 at that time.

14 Q. Were there times when you got angry with him?

15 A. Of course.

16 Q. Why would you get angry?

17 A. Because he expected so much, and when he didn't get his way  
18 he would get pissed off, so there were times that I just swore.  
19 I didn't swear directly at him but, you know.

20 Q. Would you call him names?

21 A. Yes.

22 Q. Would you complain about him?

23 A. Yes.

24 Q. To whom would you complain?

25 A. In particular it would be Correa, Mr. Correa.

G397MIR3

Leonard - direct

1 Q. Mr. Leonard, did there come a time when the doctor drove  
2 you home one day?

3 A. Yes.

4 Q. Did you have a conversation with the doctor during that  
5 drive?

6 A. Yes.

7 Q. Tell the jury about that.

8 A. Well, basically he just asked me about my kids, how was  
9 everything, and then --

10 MR. MAZUREK: Objection. Relevance and 403.

11 THE COURT: The objection is overruled.

12 Q. You may keep going.

13 A. And when we got to my house, we picked up the key that I  
14 left, the job keys that I left. After we drove back, told me,  
15 doesn't worry, stick with me, you'll be OK. I didn't say  
16 nothing after that. I didn't really know how to take that.

17 Q. Mr. Leonard, did there come a time when you were arrested  
18 in connection with your work at the doctor's office?

19 A. Yes.

20 Q. When was that?

21 A. December 2014.

22 Q. When you were arrested, where were you taken?

23 A. The 33rd Precinct.

24 Q. Did you go somewhere after that?

25 A. I came down to 500 Pearl, 500 Pearl Street.

G397MIR3

Leonard - direct

1 Q. Did you see the doctor during this period of time?

2 A. Yes.

3 Q. Did you have a conversation with him?

4 A. Yes.

5 Q. To the best of your recollection, tell the jury what you  
6 said to the doctor and what the doctor said to you in response.

7 A. Well, after I saw my lawyer, I was sent back downstairs. I  
8 saw the doctor, I greeted him, I asked him how was he feeling,  
9 he told me OK. And the next thing he said to me was -- I asked  
10 him, I said what's the matter? Your face looks kinda -- he  
11 said this fucking guy is talking. I said, well, who are you  
12 talking about in particular? He said Obama, Ray Williams. I  
13 said I didn't say anything; I didn't say anything to him about  
14 it.

15 MS. CUCINELLA: One moment.

16 Your Honor, I have no other questions except about --

17 THE COURT: So we need to deal with my evidence issue.

18 You go to lunch. See you at 2 o'clock. Don't discuss  
19 the case; keep an open mind.

20 The witness may step down.

21 (Continued on next page)

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G397MIR3

Leonard - direct

1 (Jury not present)

2 THE COURT: OK. I need a proffer from the government  
3 about what this letter is supposed to prove.

4 MS. CUCINELLA: Certainly, your Honor. After the  
5 doctor fired Ms Javier, he came out and he told Mr. Leonard, he  
6 showed him the letter and said this is what I had her do. And  
7 Mr. Leonard alluded to that.

8 THE COURT: After he fired her -- I don't understand  
9 what you just said. After he fired her --

10 MS. CUCINELLA: -- the first time --

11 THE COURT: -- the first time --

12 MS. CUCINELLA: -- he then hired her back, and he had  
13 her write this letter, and this letter acknowledges that she  
14 was altering paperwork. And when he shows it to Mr. Leonard,  
15 he says this is what I had her write.

16 THE COURT: So, what you want to do -- put the letter  
17 back up on the screen.

18 So, it's the government's contention that the  
19 defendant caused Ms. Javier to write this letter and that he  
20 admitted -- he said to Mr. Leonard I had her write this letter.

21 MS. CUCINELLA: Additionally, your Honor, it shows  
22 that the defendant knew what the staff was doing. And this is  
23 in April of 2014. The conspiracy then continues through  
24 December. And it was in his office the whole time, and it was  
25 recovered in his office the day of the arrest.

G397MIR3

Leonard - direct

1                   THE COURT: It certainly shows that the doctor was  
2 aware that Ms. Javier was switching the names and dates of  
3 birth of patients, because that's what the letter says. You  
4 have a tendency to make these really overbroad statements like  
5 "the patients," and you can't do that. You can't do that in a  
6 coconspirator case.

7                   MS. CUCINELLA: Understood.

8                   THE COURT: OK. And Ms. Javier is alleged by the  
9 government to be a coconspirator here?

10                  MS. CUCINELLA: Yes.

11                  THE COURT: So it's a coconspirator statement, and  
12 it's offered for two reasons: One is to prove that the doctor  
13 knew what a coconspirator was doing. And then the statement  
14 that the doctor allegedly made to Mr. Leonard is to prove that  
15 he made her write this letter?

16                  MS. CUCINELLA: Just that he instructed her to write  
17 it, how the letter came about.

18                  THE COURT: And that proves?

19                  MS. CUCINELLA: The defendant's knowledge that this is  
20 what was happening.

21                  THE COURT: What this?

22                  MS. CUCINELLA: I'm sorry, the conduct that's written  
23 in the letter.

24                  THE COURT: OK. And your problem is?

25                  MR. MAZUREK: Judge, I don't know how this is in

G397MIR3

Leonard - direct

1 furtherance of the alleged conspiracy, which is the second  
2 prong of 801.

3 THE COURT: Well, I get how it's in furtherance of the  
4 alleged conspiracy. She says this, he then hires her back.  
5 The government's position is that this is in furtherance of the  
6 alleged conspiracy because?

7 MR. DISKANT: We believe it's in furtherance of the  
8 conspiracy because it he gets her back in the office and so it  
9 allows them to continue to work together in furtherance of the  
10 conspiracy.

11 THE COURT: OK.

12 MR. MAZUREK: Although, the testimony is that she was  
13 hired back as a result of -- I mean as a result of, according  
14 to this witness's testimony, that there was a phone call to the  
15 doctor where she asked for her job back sometime after this.

16 THE COURT: And this witness is apparently going to  
17 say that the doctor told me I made her write this letter and  
18 then I hired her back.

19 Look, I'm not saying this is the strongest evidence in  
20 the entire world or the strongest evidence in furtherance of  
21 the conspiracy, but an argument can be made that it's in  
22 furtherance of the conspiracy.

23 It's a statement by a coconspirator during the period  
24 of time of the conspiracy. It certainly relates to some  
25 unusual behavior, since if I were a doctor and somebody in my

G397MIR3

Leonard - direct

1 employ confessed in writing to altering patient records, I  
2 wouldn't be taking that person back.

3 So, I think the government can get it in. I think the  
4 government can get it in. I will see you after lunch.

5 (Luncheon recess)

6 (Continued on next page)

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G39LMIR4

Leonard - direct

1 AFTERNOON SESSION

2 2:11 p.m.

3 (Jury present)

4 THE COURT: OK. You're still under oath, sir.

5 The objection that was made before lunch is overruled.

6 BY MS. CUCINELLA:

7 Q. Mr. Leonard, you have before you to the side of the podium  
8 a letter that's been marked as Government Exhibit 441. Have  
9 you seen this before?

10 A. Yes.

11 Q. When did you see it?

12 A. After Jomaris Javier was fired.

13 MS. CUCINELLA: Government offers Government  
14 Exhibit 441.

15 MR. MAZUREK: Continuing objection.

16 THE COURT: The objection is overruled. It's  
17 admitted.

18 (Government's Exhibit 441 received in evidence)

19 Q. How did you see it?

20 A. I saw it after Jomaris was fired for the second time.

21 Q. And did someone show it to you?

22 A. Yes. The doctor showed it to me.

23 Q. Did the doctor say anything when he showed it to you?

24 A. He told me he read it after she was fired the first time.

25 MS. CUCINELLA: I'm going to give the jury a minute

G39LMIR4

Leonard - cross

1 while the exhibit is displayed.

2 Q. Mr. Leonard, I'm now showing you what's been marked for  
3 identification as Government Exhibit 9. Do you recognize this?

4 A. Yes.

5 Q. What is it?

6 A. The doctor's bag that he takes home every afternoon.

7 MS. CUCINELLA: The government offers Exhibit 9.

8 MR. MAZUREK: No objection.

9 THE COURT: Admitted.

10 (Government's Exhibit 9 received in evidence)

11 Q. Mr. Leonard, have you ever touched that bag before?

12 A. Hell no.

13 MS. CUCINELLA: Nothing further.

14 THE COURT: You may inquire.

15 MR. MAZUREK: Can I say hell no? Just kidding.

16 CROSS-EXAMINATION

17 BY MR. MAZUREK:

18 Q. Good afternoon.

19 A. Good afternoon.

20 Q. My name is Henry Mazurek, Mr. Leonard, and I represent  
21 Dr. Mirilishvili. We've never met before, right?

22 A. No.

23 Q. You met with the government many times before this,  
24 correct?

25 A. Yes.

G39LMIR4

Leonard - cross

1 Q. And would you say you met with them maybe over about a  
2 dozen times preparing for your testimony here today?

3 A. Yes.

4 Q. And you informed me through your attorney that you did not  
5 want to answer any questions by me, correct?

6 A. Can you explain that again, please?

7 Q. Yes. I made a request to your attorney, your attorney, to  
8 interview you, but it was denied, correct?

9 A. I never heard of nothing like that. Never heard of that.

10 Q. You didn't?

11 A. No.

12 Q. But we've never talked, right?

13 A. No.

14 Q. This will be our first time?

15 A. Yes, sir.

16 Q. You were first arrested in December, I think December 11 of  
17 2014, correct?

18 A. Not sure, sir.

19 Q. Is that about the right time?

20 A. December of 2014. That's all I remember. I don't know the  
21 date.

22 Q. And on direct examination, you were asked questions about a  
23 statement that you gave or answers that you gave to the  
24 arresting agents at that time, do you remember that, do you  
25 remember that, sir?

G39LMIR4

Leonard - cross

1 A. Can you ask that question again, please?

2 Q. Yes. I'll ask it this way. After you were arrested in  
3 December of 2014, you were brought down you said to the 33rd  
4 Precinct, right?

5 A. Yes.

6 Q. And at that 33rd Precinct, the agents sat you down and  
7 asked you some questions, right?

8 A. I don't remember.

9 Q. You don't remember that happening?

10 A. I don't remember the questions.

11 Q. I'm sorry?

12 A. I don't remember the questions that they asked me.

13 Q. Do you remember them asking you questions?

14 A. Yes.

15 Q. And do you remember giving answers?

16 A. Yes.

17 Q. OK. And those answers you said yesterday were not truthful  
18 answers, correct?

19 A. Yes, at the beginning.

20 Q. At the beginning you lied to the agents?

21 A. Yes.

22 Q. But now you're telling the truth; is that your testimony?

23 A. Yes.

24 Q. And I'd like to go over what happened in between those  
25 times, December 2014 and your testimony starting yesterday. In

G39LMIR4

Leonard - cross

1 December 2014, did you accept responsibility and plead guilty  
2 to the crime of distributing oxycodone?

3 A. Say it again, please.

4 Q. In December of 2014, did you accept your responsibility and  
5 plead guilty to the crime of distributing oxycodone illegally?

6 THE COURT: Did you take a guilty plea in this court,  
7 sir?

8 THE WITNESS: Yes.

9 THE COURT: What crime did you plead guilty to?

10 THE WITNESS: Possession -- a conspiracy to possess  
11 and sell oxycodone.

12 THE COURT: OK.

13 Q. When did you do that?

14 A. I'm not sure when I did it, sir.

15 Q. Well, it was just a few weeks ago, wasn't it?

16 A. Yes.

17 Q. Don't you remember just a few weeks ago?

18 A. Yes.

19 Q. It was a pretty important moment, right, you're in court  
20 and you have to say that you're guilty of a federal felony  
21 offense, right?

22 A. Yes.

23 Q. It's not something you'd forget, right?

24 A. So much been going on, sir, I just forgot.

25 Q. But it was just I believe February, was it February 17 or

G39LMIR4

Leonard - cross

1 thereabouts?

2 A. I'm not sure the date, sir.

3 Q. I'm just asking.

4 THE COURT: It was in the last few weeks, are you  
5 saying that was in the last few weeks?

6 THE WITNESS: Yes.

7 THE COURT: Fine. Can we move on, please.

8 MR. MAZUREK: Yes.

9 Q. So it took you two years to come to that decision to plead  
10 guilty, right, from the time of your arrest until you pled  
11 guilty a few weeks ago?

12 A. No.

13 Q. You didn't plead guilty in between, right?

14 A. No.

15 Q. In between you worked out a cooperation agreement with the  
16 government, correct?

17 A. Yes.

18 Q. And you didn't work out that cooperation agreement until  
19 very recently too, right?

20 A. Yes.

21 Q. And so you decided to plead guilty, you started meeting  
22 with the government sometime early this year, the beginning of  
23 the year in January or so to answer the questions and to seek  
24 the cooperation agreement?

25 A. Can you explain that again, please.

G39LMIR4

Leonard - cross

1 Q. You first started meeting with the government at the  
2 beginning of this year to answer their questions and seek a  
3 cooperation agreement, correct?

4 A. No.

5 Q. When was it then?

6 A. I'm not sure what date it was, but it wasn't beginning of  
7 the year.

8 Q. Tell me roughly when.

9 A. I'm not sure, sir. I'm not sure what date it was.

10 Q. Sir, when you first started meeting with the government,  
11 you met with them several times, right, I think you testified,  
12 correct?

13 A. Yes.

14 Q. You met with them on -- let's see. There is a time late  
15 2015, November 18, 2015, is that about the time you first met  
16 with them, roughly a year after you were arrested?

17 A. 2015?

18 Q. Yes.

19 THE COURT: Do you remember when the first time you  
20 met with the government was?

21 THE WITNESS: I think it was in January, ma'am.

22 THE COURT: In January of this year?

23 THE WITNESS: Yes.

24 THE COURT: Just a couple months ago?

25 THE WITNESS: Yes.

G39LMIR4

Leonard - cross

1 Q. OK. And you met with them. At that point in time you had  
2 a trial date, right? You were going to go to trial, contest  
3 the charges. You had a date you had to come back to court for  
4 trial. Right?

5 A. I didn't have a trial date yet, sir.

6 Q. You didn't have a trial date yet. You had been arrested in  
7 December 14. It's now January 2016, and you make a decision  
8 you want to start cooperating. Right?

9 A. I didn't make it right at the beginning, sir.

10 Q. You wanted to try, right? You wanted to come in and answer  
11 the questions and see if the government were interested in your  
12 answers?

13 A. No.

14 Q. No. That's what you did though, right? You met with them?

15 A. Yes, eventually, down the line.

16 Q. In January of '16, correct?

17 A. Yes.

18 Q. And you wanted a cooperation agreement, right?

19 A. Not at the beginning, sir. I didn't know what I was going  
20 to do.

21 Q. No. Why did you enter into a cooperation agreement?

22 A. Only because I wanted to be able -- I wanted to tell my  
23 side of the story, take accountability for what I did.

24 Q. Your answer yesterday on direct examination is you wanted  
25 to stay out of jail, that was your first answer, right? You

G39LMIR4

Leonard - cross

1 just gave it 24 hours ago.

2 THE COURT: You know, please. Stop arguing with him.

3 MR. MAZUREK: Sorry, your Honor.

4 Q. Your first answer yesterday, sir --

5 THE COURT: Yesterday, sir, did you say that you  
6 signed that cooperation agreement in the hope that you wouldn't  
7 have to go to jail?

8 THE WITNESS: Yes, ma'am.

9 THE COURT: Fine.

10 MR. MAZUREK: Thank you, Judge.

11 Q. Now, when you started meeting with the government in  
12 January of 2016, you met with the agents and the prosecutors  
13 and they asked you a lot of questions and they asked you a lot  
14 of questions about Dr. Mirilishvili, right?

15 A. No. They asked me questions about what I did.

16 Q. And you answered those questions?

17 A. Yes.

18 Q. And then they asked you questions about what you knew about  
19 Dr. Mirilishvili, right?

20 A. They asked me questions about what I did in the office.  
21 That's what they asked me.

22 Q. Did that involve questions about what you knew, what you  
23 could tell them about Dr. Mirilishvili's practice in the  
24 office, yes or no?

25 A. Yes.

G39LMIR4

Leonard - cross

1 Q. And you knew at that point in time that Dr. Mirilishvili  
2 pled not guilty and was going to trial, right?

3 A. I didn't know that, sir.

4 Q. You didn't know that. You didn't know that in the case --  
5 you were arrested together, right, you made some comment about  
6 being in the jail cell together the day you were arrested,  
7 right?

8 A. We wasn't arrested together.

9 Q. You ended up in a jail cell together; is that your  
10 testimony on direct?

11 A. Yes.

12 Q. And you knew you were charged in the same case, right?

13 A. Yes.

14 Q. And you also knew that for you to get a cooperation  
15 agreement, you had to provide assistance to the government in  
16 their investigation of other people, right?

17 A. Can you ask that question again, please.

18 Q. In order to get a cooperation agreement with the  
19 government, you had to provide assistance to them in the  
20 investigation of other people?

21 A. Yes.

22 Q. And you knew that if you provided information about  
23 Dr. Mirilishvili, that could assist you in getting the  
24 cooperation agreement you signed a couple weeks ago, right?

25 A. Yes.

G39LMIR4

Leonard - cross

1 Q. And when you were meeting with the government since January  
2 of this year, you didn't tell them, you didn't tell them about  
3 the story of, oh, when we were in the jail cell together,  
4 Dr. Mirilishvili talked about Ray Williams, you didn't tell  
5 that, you didn't tell the government that until February 20,  
6 just a couple weeks ago, right?

7 A. Yes.

8 Q. You didn't say it back in December of 2014 when you were  
9 arrested, right?

10 A. I wasn't asked that question, sir.

11 Q. You didn't volunteer it either?

12 A. No.

13 Q. And by the time that you made that statement about  
14 Dr. Mirilishvili to the government, you had already met with  
15 them what, eight, nine, ten times before that?

16 A. I met with them quite a few times. I wasn't counting, sir.

17 Q. Now, and the only one, the only one, you didn't have any  
18 document or recording, it's just your word of that happening,  
19 right, that so-called conversation in the time of the jail  
20 cell?

21 A. Can you ask that question again?

22 Q. There's no recording, there's no documentation, there's  
23 only your word that that conversation took place, right?

24 A. Yes.

25 Q. Let me ask you about your time working at the clinic. You

G39LMIR4

Leonard - cross

1 testified yesterday about hanging out in the office. Do you  
2 remember that?

3 A. Yes.

4 Q. And you also were a patient for a few times, right?

5 A. Yes.

6 Q. And your first, I think we saw yesterday your first patient  
7 visit was on November 15, 2012, correct?

8 A. Yes.

9 Q. And you know that and that patient visit was at  
10 162nd Street, right, the office in Washington Heights?

11 A. Yes.

12 Q. And you know that that office just opened the beginning of  
13 the month in November, correct?

14 A. I didn't know that.

15 Q. You didn't know that?

16 A. No.

17 Q. You weren't there previously to November 2012, right, you  
18 didn't go to the office in September or October of 2012?

19 A. I did go to the office.

20 Q. When was the first time that you remember going to the  
21 office on West 162nd Street?

22 A. During the fall time.

23 Q. I'm sorry?

24 A. During the fall of 2012.

25 Q. During the fall?

G39LMIR4

Leonard - cross

1 A. Yes.

2 Q. Were you there months before your first patient visit?

3 A. Yes, I was there months before my first patient visit.

4 Q. I'm sorry?

5 A. Yes, I was there at the office before my first patient  
6 visit.

7 Q. For how many months were you visiting there, one month, two  
8 months, three months in the office before you finally decided  
9 to be a patient?

10 A. I don't know how many months, sir. I wasn't counting. I  
11 didn't know how many months I was there before that.

12 Q. Did it seem like a very long time to you?

13 A. Yes.

14 Q. Now, when -- the beginning, you had a friend by the name of  
15 John Coleman, right?

16 A. Yes.

17 Q. And this John Coleman was someone who was bringing you or  
18 was asking you to bring patients to the office, right?

19 A. Yes.

20 Q. And John Coleman is actually someone who is close or you  
21 knew for a long time because his wife grew up with your wife,  
22 right?

23 A. I didn't say that. I said he was a family -- friends of  
24 the family.

25 Q. Is that correct, isn't it a fact that your wife -- his wife

G39LMIR4

Leonard - cross

1 grew up with your wife?

2 A. I didn't say that, no.

3 THE COURT: He didn't ask you what you said. Did the  
4 man's wife grow up with your wife?

5 THE WITNESS: No.

6 THE COURT: OK.

7 Q. No.

8 THE COURT: Sir, you need to listen to his questions.

9 Q. What's the relationship between Coleman and your family?

10 A. Say it again?

11 Q. What is the relationship between John Coleman and your  
12 family?

13 A. He's just a friend to the family.

14 Q. How did you get to know each other?

15 A. Just a friend of the family, met him, you know, through  
16 friends, mutual friends. That's how I met him.

17 Q. You knew he was a drug dealer?

18 A. No.

19 Q. You didn't know he was a drug dealer prior to the time that  
20 he asked you to bring patients to the office?

21 A. No.

22 Q. When he asked you to do that, were you surprised that he  
23 was in that business?

24 A. Ask that again.

25 Q. At the time that he asked you to bring patients to the

G39LMIR4

Leonard - cross

1 clinic, were you surprised that John Coleman was in the drug  
2 business?

3 A. I didn't know he was in the drug business, sir.

4 Q. OK. When he asked you to do that, you figured it out?

5 A. Not at the beginning, no, not at the beginning.

6 Q. Why did you think that John Coleman was asking you to bring  
7 patients and paying you \$100 a time to bring patients to the  
8 office?

9 A. I didn't ask. I just didn't ask.

10 Q. You didn't ask?

11 A. No.

12 Q. You just did it. How many times had you seen John Coleman  
13 prior to him asking you to do this?

14 A. Every once in a while.

15 Q. How many years had you known him?

16 A. About five years, six years.

17 Q. And how did the offer come about for you to do this, how  
18 did it take place?

19 A. He just asked me that -- he asked me I can help him out and  
20 help him out, do some things. And I asked him, I asked him  
21 what was it. He'll let me know. He just wanted me to help  
22 bring some patients to a clinic. That was it. That was all he  
23 said to me.

24 Q. And then you had to take those patients after the clinic  
25 and bring them to pharmacies?

G39LMIR4

Leonard - cross

1 A. Not at the beginning, no.

2 Q. What would you do, you would leave after you dropped them  
3 off at the clinic?

4 A. No.

5 Q. You'd just wait for them to finish?

6 A. Yes, sir.

7 Q. And then leave together?

8 A. No.

9 Q. What would you do?

10 A. I would stay there.

11 Q. I'm sorry?

12 A. I was told to stay there, stay at the clinic.

13 Q. Right. Until the patient was done?

14 A. Yes.

15 Q. And then where would you go?

16 A. I was told to stay there for other patients to come.

17 Q. And just sit there?

18 A. And just sit there, yes.

19 Q. When did that change?

20 A. Later down the line.

21 Q. How long later down the line?

22 A. About three months, four months.

23 Q. So for three or four months, you weren't going to any  
24 pharmacies?

25 A. No.

G39LMIR4

Leonard - cross

1 Q. Just getting paid \$100 to sit with patients in the office;  
2 is that your testimony?

3 A. I wasn't getting paid every day \$100. It varied, sir.

4 Q. It varied. That was the job as you understood it?

5 A. That was the agreement.

6 Q. When did you first learn that John Coleman was selling  
7 these patients prescriptions?

8 A. After about a month.

9 Q. And how did you learn that?

10 A. By seeing it, witnessing it.

11 Q. You were with John Coleman when he was buying the  
12 prescriptions off of the patients?

13 A. Sometimes.

14 Q. Is that the first time that you saw that kind of drug  
15 transaction?

16 A. Yes.

17 Q. And is that how you learned how to sell oxycodone, is that  
18 your beginning into the drug business of selling oxycodone on  
19 the streets?

20 A. Can you ask that again?

21 Q. Was that the first time that you were introduced to the  
22 selling of prescriptions on the street?

23 A. Yes.

24 Q. And you eventually decided to take up that particular  
25 business, right?

G39LMIR4

Leonard - cross

1 A. Yes.

2 Q. Now, you thought it would be helpful to work in the clinic,  
3 at Dr. Mirilishvili's clinic, so that you could be like John  
4 Coleman and have a business of selling prescriptions on the  
5 street, right?

6 A. No, sir.

7 Q. You didn't have that in mind?

8 A. No, sir.

9 Q. Well, prior to you accepting that job, you started bringing  
10 in your own patients, right?

11 A. Down the line, yes.

12 Q. Prior to you taking the job at the clinic, yes or no?

13 A. Say that again, please?

14 Q. You started bringing in your own patients prior to you  
15 working at Dr. M's clinic, right?

16 A. Prior you mean?

17 Q. Before.

18 A. Before I started working there?

19 Q. Yes.

20 A. I was a crew chief before that, sir. I wasn't bringing my  
21 own patients.

22 Q. You were a crew chief?

23 A. I was bringing in patients for Mr. Coleman.

24 Q. Did Mr. Coleman introduce you to that term, crew chief?

25 A. Yes, sir.

G39LMIR4

Leonard - cross

1 Q. And when you were doing that, did you have any  
2 conversations with Dr. Mirilishvili about your role as a crew  
3 chief?

4 A. No.

5 Q. Now, when you began seeing Dr. Mirilishvili as a patient on  
6 November 15, 2012, you didn't tell him -- were you a crew chief  
7 at that point?

8 A. Yes.

9 Q. You didn't tell him you were a crew chief then, right, when  
10 you showed up in his exam room?

11 A. No.

12 Q. You didn't tell him that you didn't have a basketball  
13 injury, did you?

14 A. Yes, I did tell him that.

15 Q. You told him you had one, but it wasn't true?

16 A. No, sir.

17 Q. And you continued to lie throughout that examination  
18 because you wanted to get a prescription of oxycodone?

19 A. Yes, sir.

20 Q. And you continued to lie to him on subsequent visits and  
21 follow-up visits, correct?

22 A. Yes, sir.

23 Q. You told him that you didn't have much cash, right, you  
24 didn't have much money, you didn't have a job, right?

25 A. I didn't tell him no sort of thing.

G39LMIR4

Leonard - cross

1 Q. You didn't tell him that you didn't have a job?

2 A. He never asked me that question. I was never asked that  
3 question.

4 Q. Did he ask you whether you had children?

5 A. Not at the beginning, no, sir, no.

6 Q. During the initial patient examination, did he ask you  
7 questions about your family history?

8 A. No.

9 Q. You don't remember that?

10 A. He never asked me that, sir.

11 Q. He never asked. By the way, that initial visit was about  
12 one hour long?

13 A. No.

14 Q. No. About 60 minutes, no?

15 A. No.

16 Q. Well, in one of the meetings that you had with the  
17 government on January 21, 2016, I refer the Court and the  
18 government to 3504-24, isn't it true that you said that the  
19 examination lasted about 60 minutes or an hour?

20 A. No, sir. I don't remember me saying that.

21 Q. And at that visit, the doctor performed a physical  
22 examination, right?

23 A. To me?

24 Q. I'm sorry?

25 A. To me?

G39LMIR4

Leonard - cross

1 Q. Yes.

2 A. Yes, sir.

3 Q. And in your subsequent visits, your next visit that lasted  
4 about 20 minutes; is that right?

5 A. About 15, ten to 15 minutes.

6 Q. On that same day, on January 21, 2016, in your meeting with  
7 the government agents, the prosecutors, isn't it true you told  
8 them the next visit was 20 minutes?

9 A. I'm not sure. I don't remember me telling them that, sir.  
10 I remember just saying ten to 15 minutes.

11 Q. OK. And that was about the average time that you had taken  
12 each of the follow-up visits that you had, right?

13 A. It varied, sir. Sometimes it took ten minutes. Sometimes  
14 15. It varied.

15 Q. And you said that you had health insurance back then but  
16 you didn't use it; is that right?

17 A. At the beginning, yes, I had health insurance.

18 Q. And where did you have that health insurance from?

19 A. At the time, it was United Healthcare at the time.

20 Q. Did you get that through your wife's employment?

21 A. Yes, sir.

22 Q. You didn't tell that to the receptionist when you got to  
23 Dr. Mirilishvili's clinic, right?

24 A. I wasn't asked.

25 Q. And you didn't want to use your insurance at that point,

G39LMIR4

Leonard - cross

1 right?

2 A. I wasn't asked, sir, and that was just -- I wasn't asked  
3 about using my insurance and at the time I think at that time  
4 they wasn't taking that healthcare at the time.

5 Q. The doctor wasn't in the United Healthcare plan?

6 A. Yes, sir.

7 Q. You didn't ask about insurance on the November visit,  
8 right?

9 A. No.

10 Q. And it never came up at all during that visit?

11 A. What do you mean never came up?

12 Q. It was never discussed, you never talked about insurance?

13 A. I never talked about it. I never was asked about it.

14 Q. With anyone in the office or the doctor, right?

15 A. Nobody, not the receptionist, not the receptionist.

16 Q. How did you know they didn't take United Healthcare?

17 A. Because other patients had had United Healthcare and they  
18 wasn't -- they couldn't use it. That's what I know.

19 Q. You were -- at that point in time, the office was just a  
20 few weeks old; isn't that right?

21 A. I'm not sure if it was. I didn't know when it opened up.

22 Q. Were you having conversations with people about the  
23 insurance plans that the office was using at that time?

24 A. I wasn't having no conversations. I just overheard it.

25 Q. You overheard it while you were sitting there?

G39LMIR4

Leonard - cross

1 A. Yes, sir.

2 Q. And that's why you decided not use United Healthcare, your  
3 insurance plan for your visit?

4 A. No, not really, no, not at all, sir. I just wasn't going  
5 to use insurance because I was told to pay cash.

6 Q. By John Coleman?

7 A. Yes, sir.

8 Q. Now, when did you start selling prescriptions on the  
9 street?

10 A. I don't remember, sir, what particular time.

11 Q. You don't know the year, the month, anything?

12 A. It was 2014 really. That's when I started selling  
13 prescriptions on the street.

14 Q. So that was after you were working as an office manager, a  
15 few months after you were working as an office manager at the  
16 clinic?

17 A. Yes, sir.

18 Q. So your testimony is before that, you weren't doing any  
19 illegal drug business?

20 A. My testimony, before that I was just helping out as a crew  
21 chief.

22 Q. But you weren't making any money on your own patients?

23 A. I didn't have any patients at that time, sir.

24 Q. So you started bringing in patients in sometime in 2014?

25 A. Yes.

G39LMIR4

Leonard - cross

1 Q. And but prior to that, you were taking money for overrides  
2 in the office I think you testified to, right?

3 A. No, sir.

4 Q. You didn't take money for overrides; is that your  
5 testimony?

6 A. Can you ask me that question again?

7 Q. Do you understand what I mean when I say the word override?

8 A. I understand what you mean. I'm trying to figure out the  
9 time period.

10 Q. Let me make sure I understand. An override, I think you  
11 testified there were two things, right?

12 A. Yes.

13 Q. The first thing was trying to have people jump the line,  
14 right, that is you could put a patient into the appointment  
15 earlier so they wouldn't have to sit there, right?

16 A. And the other?

17 Q. Well, you have to answer the question first.

18 A. Yes.

19 Q. And the other was to help with the urine, that is either  
20 put a false report in or change a report that came back in a  
21 bad way?

22 A. Yes.

23 Q. And you were taking money for doing those things, right?

24 A. No, sir.

25 MR. MAZUREK: One moment, your Honor.

G39LMIR4

Leonard - cross

1 Q. When you were doing overrides, you weren't getting \$150 and  
2 giving Jomaris about \$50?

3 A. No, sir.

4 Q. You remember, do you not, having conversations with a guy  
5 you call Buck who was Abraham Correa?

6 A. Yes.

7 Q. And at that time, you later learned that he was wired for  
8 the government, that he was wearing a secret recorder on him  
9 during those conversations, right?

10 A. Say that again, please.

11 Q. You later learned that during the conversations you had  
12 with Buck in July and September of 2014 that he was wearing a  
13 recorder for the government, secret recording device?

14 A. Only learned that after I was arrested.

15 Q. After you were arrested. In fact, you listened to some of  
16 those recordings with the government in your preparation for  
17 testimony, right?

18 A. Yes.

19 Q. Now, you're saying that you never got overrides of \$150 and  
20 giving Jomaris \$50, right?

21 A. I never got overrides for over \$150, sir.

22 MR. MAZUREK: Your Honor, I would like to play a  
23 portion of the recording from September 11, 2014 at time stamp  
24 12:45.

25 THE COURT: Do I have a transcript of that?

G39LMIR4

Leonard - cross

1 MS. CUCINELLA: Can we do a side bar? We don't think  
2 this is inconsistent.

3 THE COURT: Guess what. You've now given me an  
4 opportunity to explain something to the jury and to you.

5 Ladies and gentlemen, what's going to happen is you're  
6 going to hear a portion of a tape recording. And it's not  
7 evidence, what's on the tape recording. It's being played  
8 because Mr. Mazurek takes the position that something that this  
9 gentleman said on this tape is inconsistent with something that  
10 he has said here to you at the trial. This is his evidence,  
11 not the tape statement, but this.

12 Now, the government stands up and says objection, not  
13 inconsistent. I can't decide if it's not inconsistent. I'm  
14 not the trier of fact. You are the triers of fact. You have  
15 to decide whether there's an inconsistency between what  
16 Mr. Leonard said to you here and what Mr. Leonard said on this  
17 earlier occasion.

18 If you decide that there is no inconsistency, let me  
19 tell you, it often happens that jurors don't see any  
20 inconsistency where a lawyer sees an inconsistency. But if you  
21 guys decide there was no inconsistency, you'll forget you ever  
22 heard this tape. And if you decide that there is an  
23 inconsistency, the only reason you can think about that is in  
24 deciding whether what you hear from Mr. Leonard here on the  
25 stand is true, not what the tape is true, but you can consider

G39LMIR4

Leonard - cross

1 the fact that he said different things on different occasions  
2 as you decide whether you believe him here today or not.

3 All right. That's the reason for this. And I'll  
4 explain it again when I give you my final jury instructions.

5 OK. Page and line, please.

6 MR. MAZUREK: Page 5 of the September 11, 2014.

7 THE COURT: That's DM603 for identification.

8 MR. MAZUREK: Yes. And there aren't specific lines,  
9 but the attribution at 12:45.

10 (Audio recording played)

11 Q. Mr. Leonard, when you were doing it, you were getting 150  
12 every time, right?

13 A. That was for something else, sir. That wasn't for  
14 overrides, sir, at all.

15 Q. What were you getting 150 for?

16 A. I was getting \$150 for something I was doing that had  
17 nothing to do with overrides at all. That's -- go ahead.

18 Q. Well, you were discussing at the time with Mr. Correa the  
19 issue about you being upset because Jomaris was not sharing or  
20 in the past did not share with Mr. Correa any of the money that  
21 she was charging for either jumping the line or for urine  
22 tests, right?

23 A. I wasn't upset at all. I wasn't upset at all, no.

24 Q. You weren't upset?

25 A. No.

G39LMIR4

Leonard - cross

1 Q. But you were telling Mr. Correa that when you were doing  
2 shit or I was getting, if I get 150, I'm giving you \$50 every  
3 time. What are you sharing the \$50 for?

4 A. That's during that time, during that time, it was when I  
5 would get for moving people up, I would get a couple dollars  
6 and it wasn't for overrides, sir.

7 Q. What do you mean moving people up?

8 A. Well, at the time, at the time it was moving, somebody  
9 would ask me, people ask, patients ask me a question and  
10 they'll say here, Damon, here's \$150, can I be moved up from  
11 this point. It wasn't no overrides.

12 Q. It was just to move people up so they could see the doctor  
13 quicker?

14 A. Yes. That was it.

15 Q. And you don't call that an override?

16 A. That wasn't override, sir. The override, that was not an  
17 override, sir.

18 Q. Were you getting \$100 each time to help with Augustine Cruz  
19 and Jomaris's patients?

20 A. No.

21 Q. Did you tell Mr. Correa on September 11, 2014, sometimes  
22 you have to do that much for a rap. I'm going to get Augie to  
23 give me \$100?

24 A. I don't remember that, sir, at all. I don't remember  
25 saying that at all.

G39LMIR4

Leonard - cross

1 Q. You didn't say that?

2 A. I don't remember saying that at all.

3 Q. And you would share that amount sometimes with Jomaris,  
4 right?

5 A. I don't remember saying that at all, sir, either.

6 Q. Is it something that happened, when you were working at the  
7 office, were you taking money from people in order for them to  
8 jump the line, yes or no?

9 A. Yes.

10 Q. Were you taking money from people to change their urine  
11 reports or create a false report?

12 A. No, sir.

13 Q. You never did that?

14 A. I didn't say never. I said I never did that. No, I have  
15 not did that, no. I have not did that.

16 Q. Did you know it was happening in the office?

17 A. Yes.

18 Q. And was Augustine Cruz taking money to change urine  
19 reports?

20 A. I was not sure. I don't know, sir. Not sure.

21 Q. Were overrides something that were happening on a regular  
22 basis when you were working there?

23 A. Not on a regular basis, no.

24 Q. How often?

25 A. Every now and then.

G39LMIR4

Leonard - cross

1 Q. So once a week or five times a week or ten times a week?

2 A. I'm not sure how many times, sir. I never count.

3 Q. But it was something that you were aware of that was  
4 happening, right?

5 A. Yes.

6 Q. And you talked about on direct examination that there  
7 was -- there were these different urine labs that were being  
8 used, right?

9 A. Say it again, please?

10 Q. There were different labs that were being used to test the  
11 urine, right?

12 A. Yes.

13 Q. There was Empire, right?

14 A. Yes.

15 Q. And then there was Aegis, correct?

16 A. Yes.

17 Q. And then there was AFTS, right?

18 A. Yes.

19 Q. And when you first started working there, Empire was the  
20 lab that was being used by the clinic, right?

21 A. Yes.

22 Q. Now, did you have things -- Empire set up in the computer  
23 so you could do overrides?

24 A. At the beginning, sir, I was not working there, so I wasn't  
25 doing anything.

G39LMIR4

Leonard - cross

1 Q. I'm asking when you were there, sir.

2 A. We didn't -- when I came aboard, Empire, we already -- when  
3 I came aboard, Empire, we, it was a fall out with Empire. We  
4 no longer used Empire when I started as an employee.

5 Q. When you started in September 2013?

6 A. Yes.

7 Q. At that point in time there was no more Empire; is that  
8 your testimony?

9 A. Excuse me?

10 Q. You're saying that the clinic didn't use Empire anymore at  
11 that point in time?

12 A. Yes, when I started, yes.

13 Q. And so what lab were they using at that time?

14 A. Before I started was Empire. When I became on board, we  
15 had to get a new lab which was Aegis. That's who came on board  
16 when I was hired.

17 Q. So when you were first hired, you were not working with  
18 Empire in September, October 2013?

19 A. Say that again?

20 Q. In September, October 2013, when you first started with the  
21 labs, you had to upload the lab reports, right?

22 A. Yes.

23 Q. What lab reports were you uploading?

24 A. That was Aegis.

25 MR. MAZUREK: We're going to put on the screen what's

G39LMIR4

Leonard - cross

1       been already admitted into evidence as GX223. Is it on  
2       everyone's screen? And if we can blow up the first half of it  
3       or the top, first top.

4                   THE COURT: You mean like above the shaded boxes?

5                   MR. MAZUREK: That's fine.

6       Q. This is a lab report for Empire City Laboratories, correct?

7       A. Yes.

8       Q. And you see the collection date towards the -- on the  
9       middle of the page, there's the word accession, a number, and  
10       then a COLL.date. Do you see that, sir?

11       A. Yes.

12       Q. Can you read it for me?

13       A. January 27, 2014.

14       Q. And the clinic that was using this Empire City Laboratory  
15       report was Dr. Mirilishvili's, right?

16       A. It says his name on there, yes.

17       Q. And there was the patient name is Ira Sheppard, correct?

18       A. Yes.

19       Q. And this is after -- this is about four months after you  
20       started working there, correct? Correct?

21                   THE COURT: Is that after you started working there,  
22       sir?

23                   THE WITNESS: Yes. That was after I started working  
24       there, yes.

25                   THE COURT: Thank you.

G39LMIR4

Leonard - cross

1 Q. So Empire lab was still being used months after, many  
2 months after you started working there, right?

3 A. Yes, it was still being used.

4 Q. In fact, I mean you said there were about 30 patients a day  
5 going into the office at that time?

6 A. A little more, about 30, 35, 40, yes.

7 Q. And any follow-up visit required a urine lab report, right?

8 A. Yes.

9 Q. So there were literally hundreds, hundreds of urine lab  
10 reports being done on a weekly basis, right?

11 A. Yes.

12 Q. And one of your few jobs was to scan documents up onto the  
13 computer system, right?

14 A. Yes.

15 Q. And one of the few documents you had to scan on the  
16 computer system were lab reports, right?

17 A. Yes.

18 Q. And so you were doing literally hundreds of scans, hundreds  
19 of lab reports around this time and they were all Empire labs,  
20 weren't they?

21 A. Yes.

22 Q. Now, there came a time when you couldn't do any more  
23 overrides of urine reports, right, while you were still working  
24 at the office?

25 A. I don't remember that, sir. No.

G39LMIR4

Leonard - cross

1 Q. As far as you know, there were always overrides being done  
2 at the office?

3 A. No.

4 Q. I'm sorry?

5 A. No, sir.

6 Q. There was a time when the overrides stopped?

7 A. You asked the question was it the time override was always  
8 working, right? That was the question you asked me?

9 Q. Let me ask you this. Did you know a time when the  
10 overrides stopped in the office, which I thought was my first  
11 question?

12 A. Yes.

13 Q. OK. And that happened when the labs changed from Aegis to  
14 AFTS, right?

15 A. No.

16 Q. It didn't happen then?

17 A. No, sir.

18 Q. In about September of 2014?

19 A. I don't remember what day it was or what month or what day,  
20 I don't know. But that's not when they stopped.

21 Q. Well, on September 11, 2014, when you were speaking to  
22 Mr. Correa, you were telling him that there's no more  
23 overrides. He was looking for an override. You said there's  
24 no overrides. Right?

25 A. Yes.

G39LMIR4

Leonard - cross

1 Q. And that's because the labs were changing, right?

2 A. That's when Aegis came aboard.

3 Q. This is in September of 2014?

4 A. September 2014, I don't remember the date, sir. I don't  
5 remember.

6 Q. But people still wanted you to do overrides at this time,  
7 like Mr. Correa at the time he was asking, right?

8 A. Correa wasn't asking for override at the time because he  
9 was no longer an employee at the office or a patient. He  
10 wasn't asking for no overrides.

11 Q. He was coming to you in order to see whether you could get  
12 him new patients in the office, right?

13 A. He didn't come to me to ask me, no, sir.

14 Q. He didn't come to you September 2014 to try to get new  
15 patients?

16 A. No, sir.

17 MR. MAZUREK: Just a moment, your Honor.

18 Q. Were you sending Mr. Correa to Madison MRI on September 11,  
19 2014 to get some MRI reports?

20 A. Say that again?

21 Q. Were you directing Mr. Correa to go to an MRI center called  
22 Madison MRI on Fifth Avenue and 122nd Street?

23 A. I remember telling him that that was a place he can go to  
24 to get MRIs done.

25 Q. That they would hook him up there; is that right?

G39LMIR4

Leonard - cross

1 A. No, sir.

2 Q. That he could get an MRI for about 40 bucks and they can  
3 put it in the system, right?

4 A. Put what in what system, sir?

5 Q. In their own system so that if you called them, it would  
6 look legit and if the doctor called to verify, it would be  
7 right in the system and it would be an MRI report that could be  
8 verified?

9 A. I'm not sure. I don't remember him telling him that  
10 particularly, particular thing, sir. I don't remember telling  
11 him that.

12 (Continued on next page)

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G397MIR5

Leonard - cross

1 Q. Well, would it refresh your memory to hear the recording of  
2 what you told him then?

3 A. No problem.

4 THE COURT: You're going to have to show him a  
5 transcript, because you can't hear the recording unless I  
6 excuse the jury.

7 MR. MAZUREK: Yes, your Honor.

8 I'm referring to page 16, the attributions from  
9 between 41 minutes and 45 seconds and the attribution at 43:13.

10 May I approach, your Honor?

11 THE COURT: You may.

12 MR. MAZUREK: I'm just marking it so you can see.

13 If you can read just to yourself, OK.

14 THE COURT: Just read that to yourself, sir, and then  
15 tell us if it jogs your memory that you said.

16 MR. MAZUREK: Tell me when you're ready Mr. Leonard.

17 THE WITNESS: I don't remember seeing this.

18 THE COURT: That isn't the issue. Do you remember --  
19 do you remember saying that?

20 THE WITNESS: I remember saying that, yes.

21 THE COURT: You do.

22 He remembers saying that, OK.

23 Q. So you remember that in your conversation with Mr. Correa  
24 on September 11, 2014 you had information about an MRI center  
25 on Madison and 122nd who were putting false MRIs into their

G397MIR5

Leonard - cross

1 system.

2 A. I didn't have information. This is what I was told from  
3 somebody else on the street.

4 Q. But you related it to Mr. Correa.

5 A. Yes.

6 Q. And you were talking about a person named Heidi.

7 A. Yes.

8 Q. Who was Heidi?

9 A. She was a former -- she was a patient of Dr. Moshe's.

10 Q. And she was working at that MRI place now?

11 A. Which?

12 Q. The one on Madison that you were directing Mr. Correa to go  
13 to?

14 A. No, sir.

15 Q. Who was working there that you knew in order to help you  
16 with getting those false MRIs?

17 A. I didn't know nobody, and nobody was getting me no false  
18 MRIs, sir.

19 Q. All right. That was just information that you were passing  
20 on?

21 A. Yes, sir.

22 Q. And who was J? Was that someone who was working there?

23 Was that Jomaris? Or she knew somebody who was working there?

24 A. Where? At Madison?

25 Q. Yes.

G397MIR5

Leonard - cross

1 A. No.

2 Q. Well, when you were telling Mr. Correa that you can get  
3 those false MRIs, they could be legitimately put into the  
4 system, you mentioned J, her and what's her name. She said  
5 send them over there, and they will do whatever.

6 A. Well, at that time, sir, Jomaris was working at another  
7 place, another office at that time. That's what I told Mr.  
8 Correa.

9 Q. And so you knew that Jomaris was the person that had the  
10 connection at the MRI place in Madison for you to get -- to  
11 send people to?

12 A. I didn't know that, sir. That's just what I was told, that  
13 she can -- I was told that you can send them there. That's all  
14 I was told.

15 Q. And you were telling other crew chiefs this at this time?

16 A. I wasn't telling any crew chiefs that at any time. I only  
17 spoke to Mr. Correa.

18 Q. Only to Mr. Correa.

19 A. Yes.

20 Q. Were you speaking to Jomaris at the time to get information  
21 about how she could get false paperwork for your patients?

22 A. No, sir.

23 Q. You still had patients there, right?

24 A. At Dr. Moshe's office?

25 Q. Yes.

G397MIR5

Leonard - cross

1 A. Yes.

2 Q. And were you going to assist Mr. Correa to try to get some  
3 paperwork or use some old paperwork to try to get him new  
4 patients at the doctor's office in September of 2014?

5 A. I wasn't going to assist him on anything. I just told him,  
6 I told him what to do, and that was it; it was up to him to do  
7 the rest.

8 Q. Were you going to put the paperwork through for him?

9 A. Can you ask me that question again?

10 Q. On the meeting on September 11, 2014 you were helping Mr.  
11 Correa to get new patients in the office, right?

12 A. I wasn't helping him do anything. I was just telling him  
13 the system, tell him what he can do in order to get new people.

14 Q. Well, one of the thing you told him was to go to this MRI  
15 place on Madison Avenue who would legitimately put in an MRI so  
16 that when it was verified it would come up clean, right? That  
17 was one of the things you told him?

18 A. Yes.

19 Q. And another thing is you will try to jump up or push --  
20 push forward for him two, three, pick it, new patients if he  
21 wanted; you will do him that favor.

22 A. No, sir, I never told him how many patients. We never  
23 talked about how many patients he would get put in.

24 MR. MAZUREK: Your Honor, I ask to play another  
25 recording. This one is at page 15 of DM 603, starting at 40

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Leonard - cross

1 minutes 45 seconds under the third from the bottom attribution.

2 THE COURT: What was the page again?

3 MR. MAZUREK: 15.

4 THE COURT: OK.

5 MR. MAZUREK: The time marker is 40:45.

6 THE COURT: Thank you.

7 (Audio recording played)

8 Q. So you agreed to get in two, three, maybe not all in one  
9 day, but two or three patients for Mr. Correa, right?

10 A. That's what we talked about.

11 Q. Now, that new lab that you talked about earlier, that  
12 stopped the overrides in the office, right? You weren't able  
13 to do it anymore?

14 A. Which new lab, sir?

15 Q. The one where the lab reports were going directly to a  
16 secured portal.

17 A. I don't know which one was that. Which one are you talking  
18 about?

19 Q. Could it have been ATS?

20 A. Can you ask that question again?

21 Q. There were three labs, right, at the time that you worked  
22 there. There was an Empire Lab, there was an Aegis Lab and an  
23 AFTS lab, right?

24 A. Yes.

25 Q. In September 2014, when you were meeting, one of the many

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Leonard - cross

1 times that Correa had a wire on him, you were talking to him  
2 that the overrides stopped, we can't do it anymore, right?

3 A. Yes.

4 Q. And that was because there was then a secured portal that  
5 was being used by the new lab, and that new lab was AFTS,  
6 right?

7 A. It wasn't AFTS; it was Aegis Labs.

8 Q. It was Aegis Labs, that's fine. And what that was was that  
9 once the doctor opens that port up, there is nothing you can  
10 did about overriding the report.

11 A. That's what I told him, yes.

12 Q. And there were people, crew chiefs who were getting upset  
13 with you because you couldn't do any more overrides.

14 A. They were just getting upset period. They wasn't getting  
15 upset with me per se; they were just getting upset period.

16 Q. Because the patients would get kicked out if the doctor  
17 opened up the secured port and they had a bad lab report,  
18 right?

19 A. Not necessarily. Patients weren't getting kicked out  
20 necessarily for just lab reports, no.

21 Q. Well, there is one particular patient that you talked about  
22 with Mr. Correa that got kicked out, right, because the doctor  
23 opened up the port and that was the end, right?

24 A. Yes, I remember that conversation, yes.

25 Q. You remember that conversation. And you were laughing with

G397MIR5

Leonard - cross

1 Correa because it's, like, oh, she just had to pay me \$50 but  
2 she didn't do that and, therefore, she got screwed -- in a  
3 little bit more colorful language -- and now she's out,  
4 couldn't be a patient anymore. Right?

5 A. No, sir, I never -- no.

6 Q. Well, how would \$50 -- if she paid \$50, how would that have  
7 changed the situation from the doctor kicking her out because  
8 of that lab report?

9 A. It wouldn't have changed nothing but I wouldn't have took  
10 anything. It wouldn't have changed anything.

11 Q. Well, you said that \$50 screwed her up. It only cost her  
12 \$50 which would have taken care of it, right?

13 A. \$50 was for the urine to get tested. If that's what I  
14 mentioned, that's what the lab -- it cost the lab to test the  
15 urine.

16 Q. Right. It cost the patient \$50 for the lab to test.

17 A. Yes.

18 Q. But once the doctor opened up the secured portal, saw that  
19 it was a bad test, she got kicked out, right?

20 A. Yes.

21 Q. And then you were laughing with Correa because you were  
22 like, it's crazy, she could have avoided all of that with just  
23 \$50 -- for just \$50 -- because that \$50 was going to go to you,  
24 right?

25 A. No, sir.

G397MIR5

Leonard - cross

1 Q. Well, what were you talking about then?

2 A. That had nothing to do with that, sir. That had nothing to  
3 do with that.

4 Q. So how did \$50 screw up to be out of the system?

5 A. Sir, that was something else, it was misinterpreted.

6 Q. Well, that's what you said, right?

7 A. It was misinterpreted, sir.

8 Q. By whom?

9 A. By me to Mr. Correa. That's not what --

10 Q. Sir, my question is this: What did you mean when you said  
11 that the patient can't come back anymore. Once the doctor  
12 opens that port up again, there is nothing you can do about  
13 it -- and without the swear words -- and \$50 screwed her butt?  
14 What did you mean?

15 A. She knew she was messing around. The patient knew that her  
16 urine was dirty, so she just wasted \$50. That's what I was  
17 mentioning to Mr. Correa.

18 Q. But there were times when the \$50 could go to you or to  
19 Tamaris or Augustine and you guys would change it; you would  
20 make a false report, right?

21 A. No, sir.

22 Q. That never happened?

23 A. It happened, sir, but it didn't happen on that occasion,  
24 sir.

25 Q. No, I'm saying before that, right?

G397MIR5

Leonard - cross

1 A. Before that, yes.

2 Q. And then when the secured portal came, you weren't able to  
3 do that; you weren't able to make that extra money, right?

4 A. It wasn't about extra money, sir. It wasn't about extra  
5 money.

6 Q. You couldn't did the overrides to falsify the findings in  
7 the lab report, right? You couldn't do it anymore. That's  
8 what you're telling Correa, right?

9 A. Yes, I couldn't did it anymore, yes.

10 MR. MAZUREK: Your Honor, might this be a good time to  
11 take an afternoon break?

12 THE COURT: It is a good time to take an afternoon  
13 break? Yes, fine, we will take an afternoon break. Don't  
14 discuss the case; keep an open mind.

15 Take a stretch break, sir.

16 (Jury not present)

17 (Recess)

18 (Jury present)

19 THE COURT: OK. You are still under oath, sir.

20 MR. MAZUREK: Thanks, Judge.

21 DAMON LEONARD, resumed.

22 CROSS-EXAMINATION (Continued)

23 BY MR. MAZUREK:

24 Q. Mr. Leonard, before the break we were talking about the  
25 labs and the changing of the labs and the secure portal. The

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Leonard - cross

1 way you thought about it at the time in September of 2014 was  
2 that, well, now the doctor is getting smarter, he doesn't want  
3 you to do the paperwork anymore; it's going to go directly to  
4 the portal, right?

5 A. No, not necessarily. What I meant by that is by the doctor  
6 getting smarter, he is getting tech savvy. That's what I  
7 meant, by him getting tech savvy meaning he is getting smarter,  
8 everything is going to him, tech savvy. The fact that he  
9 didn't want to get caught, so that's the reason why he wanted  
10 everything to come to that portal now, because he wanted to be  
11 able to protect himself.

12 Q. Well, let's break that down a little. Prior to the doctor  
13 changing the lab, you were able to go into the system and  
14 falsify reports, correct?

15 A. No, sir. Say that again to me.

16 Q. Prior to the lab change, where the doctor -- the doctor  
17 hired a new lab where the information can go directly through  
18 to a secure portal, right?

19 A. That's after Aegis, yes.

20 Q. And before that, the office staff -- you included -- were  
21 able to change lab reports, right?

22 A. Yes.

23 Q. And when you said that the doctor is getting smarter, he no  
24 longer wants me to put in the paperwork, you were talking about  
25 the fact that, oh, now we can't change the paperwork; it goes

G397MIR5

Leonard - cross

1 directly to him, right?

2 A. That's not exactly what I was saying at all, no, sir.

3 Q. No? You think you said that because you were just  
4 commenting on the fact that the doctor was getting more tech  
5 savvy?

6 A. Yes, and the fact, and also, like I said --

7 Q. There is no question pending.

8 A. OK.

9 Q. But that's what happened, right? When the lab changed from  
10 Aegis, he didn't want you to put it in the packet anymore that  
11 you prepared.

12 A. That we prepared. He didn't want it in no more because it  
13 was less paperwork too. We also talked about that, he wanted  
14 less paperwork also. That's why he wanted it to come to his  
15 portal. That's another reason why he agreed.

16 Q. So then he just wanted the PMP to go on the computer,  
17 right?

18 A. He wanted the PMP, he wanted the patient's ID.

19 Q. And you had to tell other -- your crew chief, so called  
20 crew chief friends, that if you drop your urine and it's not  
21 good, I can no longer help you?

22 A. I didn't have to tell them anything.

23 Q. Well, that's what you told Correa at the time that that's  
24 what you're telling people now.

25 A. That was just me talking. I never said that to anybody.

G397MIR5

Leonard - cross

1 That was just me talking with Correa.

2 Q. So, you were just talking to Correa about the fact that if  
3 patients drop a urine and it's not good, that you can't help  
4 them anymore.

5 A. Meaning before that I was told by the doctor if your  
6 urine -- if the urine is no good, no need to send them in there  
7 with me, I don't want to waste my time, you tell them.

8 So, ultimately down the line I thought -- I said to  
9 myself that's not my job to tell the patients if their urine is  
10 no good; that's the doctor's job.

11 Q. But for some patients if the urine was no good, you just  
12 switched it out with a false report, right?

13 A. Not true. Not true.

14 Q. You never did that?

15 A. I did that, but it's not true like that. That's not how it  
16 went, sir.

17 Q. Well, I mean you knew or you had experiences with a bunch  
18 of these guys that were coming to the office bringing in  
19 patients, right?

20 A. Yes.

21 Q. You knew some guys named Dogs and Obama I think you said,  
22 right?

23 A. Yes.

24 Q. And these were people that you got to know hanging around  
25 Dr. Moshe's clinic, right?

G397MIR5

Leonard - cross

1 A. Yes.

2 Q. And you also knew when you started that Jomaris would get  
3 bribed by some of these guys to do overrides, right?

4 A. Yes.

5 Q. Which would be changing reports, right?

6 A. Yes, not all the time though, sir. That didn't happen all  
7 the time.

8 Q. I'm not saying all the time; I'm just trying to figure out  
9 what happened here. And the reports that she would change  
10 would be MRIs or referrals, right? Not all the time, but she  
11 would change those.

12 A. Yes.

13 Q. She would change urine reports, right?

14 A. Yes.

15 Q. And she would also take bribes to jump people in line, have  
16 them go in sooner to see the doctor so they wouldn't have to  
17 wait around that long.

18 A. Only when asked by the patient or -- only when asked.

19 Q. Only when asked. She took the money, right?

20 A. I suppose so. I don't know, sir. I'm not sure if she took  
21 it. I didn't see her take it hand to hand, no.

22 Q. There would be no money exchanged for that kind of business  
23 in the office. You didn't want to get caught that way.

24 A. I never witnessed it, sir, as far as whatever agreement she  
25 had. I knew she was taking it, but I never seen it.

G397MIR5

Leonard - cross

1 Q. How much do you know she was taking?

2 A. I'm not sure, sir. I'm not sure. I never discussed that  
3 with her.

4 Q. Did you think that at some point that she was making maybe  
5 \$1,000 a week on that stuff?

6 A. I'm not sure.

7 Q. No? Did you ever tell that to Mr. Correa?

8 A. That was just an estimated guess.

9 Q. That was just an estimated guess.

10 A. Yes.

11 Q. But it was one with knowledge, right? Because you were  
12 working along side her.

13 A. It wasn't with knowledge. It was just an estimated guess  
14 when I was talking to Mr. Correa about, just an estimated  
15 guess. I didn't know how much she was getting.

16 Q. Sometimes people would come into the office, and they would  
17 also talk to Augustine Cruz, right, about doing overrides?

18 A. I never heard nobody come and talk to Mr. Cruz about that,  
19 sir.

20 Q. You knew Augustine Cruz was doing overrides, right?

21 A. I knew he was taking overrides, but I didn't know when,  
22 sir. Those conversations were never in front of me; they was  
23 always to the side.

24 Q. Always to the side.

25 A. Um-hum.

G397MIR5

Leonard - cross

1 Q. But people had conversations with you about doing overrides  
2 directly, right?

3 A. Yes.

4 Q. And you did them on occasion.

5 A. Only on occasion, sir.

6 Q. Only on occasion. You knew how to do it?

7 A. I was taught by Ms. Javier, yes.

8 Q. How do you do an override on a urine test?

9 A. The only thing that you do is you just switch the  
10 paperwork. Last month's urine analysis that was good, you put  
11 it to this month's urinalysis report.

12 Q. Did you ever see that anyone would change it on the  
13 computer, changing the name, the patient name, and the results  
14 of the test?

15 A. I haven't seen that like that, sir, no.

16 Q. And the whole time you were hanging around the office or  
17 working around the office, you never learned that Augustine  
18 Cruz was changing -- or Augustine and Jomaris were changing and  
19 falsifying reports, to put reports that looked like reports  
20 from the lab but weren't?

21 A. Say that again.

22 THE COURT: Yes, say it again. I don't understand it.

23 MR. MAZUREK: Thank you. It was long.

24 Q. There was a system in the office, right, that sometimes if  
25 a report came back and it was bad, you just pulled the report

G397MIR5

Leonard - cross

1 and replaced it by making it up, right?

2 A. Yes. The only reason why was the fact was the ultimate  
3 goal was numbers, so...

4 Q. Whose numbers?

5 A. The doctor's numbers.

6 Q. So you were falsifying lab reports of urine tests to help  
7 the doctor increase his numbers in the office; is that your  
8 testimony?

9 A. Yes, sir.

10 Q. Now, you were selling -- I mean you sold multiple bottles  
11 of pills to Abraham Correa in September of 2014, right? You  
12 sold two or three bottles of pills to him?

13 A. I'm not sure what month it was.

14 Q. Just roughly, sir. Roughly. Do you remember that event  
15 happening?

16 A. Yes, I remember it happening, yes.

17 Q. And you got \$1800 for 90 pills, right?

18 A. I didn't get \$1800. I got \$18 per pill, sir.

19 Q. So, you got 18 times 90. My math is not that great, but 18  
20 times 90 for each bottle of pills, correct?

21 A. Say it again.

22 Q. \$18 per pill and the bottles were 90 pills.

23 A. Yes.

24 Q. And that wasn't the only person you sold that to, Abraham  
25 Correa, right? You were selling pills to other people.

G397MIR5

Leonard - cross

1 A. One more person, yes.

2 Q. One other person?

3 A. Yes, sir.

4 Q. That was your total -- that was the person who was  
5 purchasing all of your supply?

6 A. Yes, sir.

7 Q. And who was that?

8 A. It was a Spanish guy, that was it.

9 Q. A Spanish guy. Do you know his name?

10 A. The name I called him was Papi. That was it.

11 Q. You never knew who it was that you were selling pills to?

12 A. No. I ultimately didn't care what was his name; I didn't  
13 care who he was really.

14 Q. You're not just trying to protect someone right now in  
15 court?

16 A. No, sir.

17 Q. About how many pills did you sell to this person?

18 A. I don't know, sir.

19 Q. Tens of thousands?

20 A. I'm not sure, sir.

21 Q. Well, how many so-called patients did you have that you say  
22 you brought into Dr. Mirilishvili's office?

23 A. About maybe eight or nine.

24 Q. For how long a time period?

25 A. I'm not sure. Maybe about like about a year.

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Leonard - cross

1 Q. About a year?

2 A. Um-hum.

3 Q. And nobody was taking those pills as medicine, right?

4 A. No.

5 Q. You were selling each and every one of those prescriptions.

6 A. Yes, sir.

7 Q. And each of those persons came in and had monthly visits?

8 A. Yes, sir.

9 Q. So, you were getting for eight or nine people for 12 times  
10 a year, that's about 100 prescriptions in one year, right?

11 A. I'm not sure, sir. It could be. I'm not sure.

12 Q. More or less. Do I have it correct my math?

13 A. I'm not sure, sir. It could be, could be right.

14 Q. And even if you didn't get \$18 a pill, if you got \$16 a  
15 pill, that's a lot of money. It's a lot of money, right?

16 A. I didn't get \$16 per pill. I only got usually \$18 when I  
17 dealt with Mr. Correa. Previously before that it was \$12 a  
18 pill, \$12.50.

19 Q. Maybe you got a little bit less, but it's still a lot of  
20 money, right?

21 A. After costs, not really.

22 Q. And the cost being you had to put out for the  
23 prescriptions.

24 A. The prescription, the pharmacy and the patient.

25 Q. You didn't have to pay for any overrides, because you were

G397MIR5

Leonard - cross

1 the office staff, right?

2 A. There were no overrides at that time, sir.

3 Q. You didn't have to jump the line, because you were the guy  
4 making the decision of when your patients would go in, right?

5 A. My patients waited just like everybody else did.

6 Q. So according to my calculations here, with some help from  
7 friends, having eight or nine people with monthly prescriptions  
8 of pills for an entire year is about, if you're selling it at  
9 around \$17 or \$18 a pill, it's about \$175,000. Now, I  
10 understand that you may have gotten less than that.

11 A. I have gotten less than that, sir, so that estimate is off.

12 Q. Well, you remember talking to Mr. Correa about the fact  
13 that Augustine Cruz was bragging about having 200 racks. Do  
14 you remember that?

15 A. Yes, I remember that.

16 Q. And what did you understand 200 racks to mean?

17 A. It could have meant anything.

18 Q. Well, you knew, you understood it to be \$200,000, right?

19 A. Yes, but that was just a conversation that he had, so I  
20 don't know what that really means.

21 Q. You were having a conversation with Mr. Correa about the  
22 fact that Auggie was bragging about having \$200,000 from his  
23 pill sales, right?

24 A. He never said pill sales, sir.

25 Q. Well, that's what you understood, right?

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Leonard - cross

1 A. No, sir.

2 Q. Well, where was Augustine Cruz getting \$200,000? From  
3 working for Dr. Mirilishvili at \$500 a week?

4 A. Frankly, sir, I didn't care. I didn't know. I didn't  
5 care.

6 Q. Well, you did care because he was bragging to your wife  
7 about it, right?

8 A. I only cared because that was something my wife told me,  
9 but it wasn't a big deal. I never really even worried about  
10 that. It was just something I told Correa. It was pish posh,  
11 gone. It wasn't nothing.

12 Q. Well, the reason you were telling Mr. Correa you were upset  
13 is because now your wife is going to think you have a stash of  
14 hundreds of thousands of dollars, right?

15 A. No, not really, not at all.

16 Q. Well, wasn't that the conversation you were having with him  
17 on September 11, 2014?

18 A. Well, if I may say, we was just goofing around, fucking  
19 around, just talking. It wasn't really nothing.

20 Q. Well, but that is what you were talking about, that you  
21 were upset because your wife, you don't tell females that  
22 stuff. Isn't that what you said?

23 A. You don't tell females that because at the end of the day  
24 what was the reason why I was telling my wife that? We could  
25 have just been F'ing around. But, you know, hey, but that's

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Leonard - cross

1 something I told to Correa; that was just whatever.

2 Q. You didn't say that at the time. At the time you're  
3 telling Correa the problem is now she's going to come home  
4 thinking that you are sitting on all of that money. That's  
5 what you said, right?

6 A. That's just what I told him, sir. That wasn't true.

7 Q. That wasn't true.

8 A. No, it was just a conversation, sir.

9 Q. And, by the way, Augustine Cruz was also someone who was  
10 close to you. You considered him like family, right?

11 A. Well, because my wife knew him for a long time.

12 Q. And you had a cousin who was going out with his brother?

13 A. Yes, had a previous kid by his brother, yes.

14 Q. So when you saw Augustine Cruz in Dr. Mirilishvili's  
15 medical clinic in 2012, that wasn't the first time you met him.

16 A. I don't think he was there, sir, in 2012, sir.

17 Q. He started in 2013?

18 A. I'm not sure, but I know it wasn't 2012.

19 Q. OK. But when Augustine Cruz got the job at Dr.  
20 Mirilishvili's clinic, you knew who he was; he was a long time  
21 family friend.

22 A. I knew who he was, but I wasn't the one who hired him, so

23 ...

24 Q. No, but you knew before you got hired that your family  
25 friend was working there, right?

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Leonard - cross

1 A. Yes.

2 Q. And he was also in a relationship with Jomaris Javier,  
3 right?

4 A. I didn't know that at the time, at the beginning. I didn't  
5 know he was in a relationship. That was kept quiet, so if they  
6 were, I didn't know that.

7 Q. You later learned that.

8 A. Yes, sir.

9 Q. Now, I want to ask you about the times when the doctor  
10 would verify information relating to a couple things. We will  
11 start with pharmacies. OK?

12 A. Um-hum.

13 Q. In September 2014 you knew that around that time the doctor  
14 was verifying everything, so if a pharmacy called, you had to  
15 click it right over to him, click the phone call right over to  
16 him, right?

17 A. Can you ask me that question again?

18 Q. Yes. In or about September of 2014 the doctor was  
19 verifying everything, so if the pharmacy called, you had to  
20 click it over to him; you couldn't take that call; you had to  
21 give it to the doctor.

22 A. I was told by the doctor that he would verify everything,  
23 because I wasn't a doctor, so I couldn't verify anything.

24 Q. OK. When I say verify if a pharmacy calls, it's that the  
25 prescription was written to a certain patient and what the

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Leonard - cross

1 prescription was, right?

2 A. Yes, sir.

3 Q. Now, you were telling Mr. Correa that there was one guy  
4 named Mitch who got mad at you because he had somebody who was  
5 I guess one of his patients, and he got caught because the call  
6 went through to the doctor, and you didn't help him out, and he  
7 got mad.

8 A. Yes, sir, I remember that conversation.

9 Q. And you were telling Mr. Correa it's not my fault, now the  
10 doctor requires this. Right? He's got to verify.

11 A. That's not what I meant, sir. That's not what I meant at  
12 all.

13 Q. Well, isn't that what was happening, that the doctor  
14 required you to click the calls from the pharmacy to verify,  
15 and you couldn't talk to the pharmacist?

16 A. I couldn't talk to the pharmacists because that's what the  
17 doctor required, he wanted to talk to them. That was it.

18 Q. Thank you. Now, in addition to pharmacies, the doctor was  
19 also checking the MRIs, correct?

20 A. Say again.

21 Q. In addition to pharmacy calls, the doctor was also  
22 verifying MRIs.

23 A. Not all MRIs, only after the Terdiman situation, that's  
24 when he wanted to start checking MRIs.

25 Q. Well, he would check them. He wouldn't let you check all

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Leonard - cross

1 of the MRIs, right?

2 A. The only reason why he wasn't checking all of them is  
3 because I was told that was my job to check all of them. After  
4 a while, when I decided I didn't want to put may Hancock on it  
5 no more, I told him he had to help me do it. Because I already  
6 knew at that point he was already setting up to say, well, you  
7 know what, if it hits the fan I'm going to put it on my office  
8 staff. So I eventually told him you have to help me out too;  
9 I'm not verifying no more.

10 Q. You were dealing in hundreds of thousands of dollars of  
11 pills on the streets, and you were concerned that your  
12 signature on an MRI was going to get you somehow in trouble?  
13 Is that what your testimony is?

14 A. No, that's not my testimony.

15 Q. That was part of your job, wasn't it?

16 A. It was part of my job, sir, yes.

17 Q. And all you had to do was call the number on the MRI and  
18 ask if the person was a patient there, right? That was part of  
19 the verification process?

20 A. That was part of it.

21 Q. OK. And if the person on the other end of the phone said,  
22 yes, this person is a patient, then you would sign and say  
23 verify, right?

24 A. That's what I was told by the doctor, sir.

25 Q. Well, that was your job, right?

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Leonard - cross

1 A. Yes, sir.

2 Q. Now, you knew that Jomaris in the past had just told the  
3 doctor that, oh, it's verified, whether she didn't verify it  
4 with the office where the MRI came from, right?

5 A. No, sir.

6 Q. You didn't know that?

7 A. No, sir.

8 Q. You didn't know that she was actually creating her own  
9 documents and so that in verifying it she knew that those  
10 documents weren't true?

11 A. Sir, in the beginning I didn't know what she was doctoring  
12 up. The paperwork was going to the doctor. I frankly didn't  
13 care. It was going to him. Patients still were receiving  
14 their oxycodone prescriptions.

15 Q. But my question is really simple. It's that you knew there  
16 was a system in place by the office staff to send in paperwork  
17 to the doctor, the MRIs and the referrals, that were falsified,  
18 right? You knew that.

19 A. I didn't know anything at the beginning, sir. I didn't  
20 know that at the beginning. That only happened after he told  
21 us we had to verify it. At the beginning, there was no such  
22 thing, just view the MRI referrals, send them in to me.

23 Q. But you had your own fake MRI in November of 2012, right?

24 A. Yes.

25 Q. So, you knew what the system was from the very beginning,

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Leonard - cross

1 right?

2 A. I knew what it was at the beginning, sir, yes, I knew, but  
3 he also knew himself.

4 Q. Well, let me ask about that. Because when the doctor would  
5 verify or would call -- I mean we are talking about a lot of  
6 patients, right? There are a lot of patients every day you  
7 said, correct?

8 A. Yes.

9 Q. He asked the staff initially to be the people who would  
10 verify the paperwork, right?

11 A. Yes.

12 Q. On occasion he would check and do it on his own, right?

13 A. Like I said again, the only time he did that is when I told  
14 him that I wasn't verifying no more. Before that that was our  
15 job to verify. He didn't do it until after I told him I told  
16 him I wasn't going to do so much to verify, he had to help me  
17 out. Before that it was the office staff.

18 Q. Well, let me ask you this. There came a time in September  
19 2014 when another one of your friends was mad at you because  
20 the doctor came to you and said he wanted to talk to the doctor  
21 on the MRI paperwork. Do you remember that?

22 A. I don't remember that, sir. I don't remember that. You  
23 will have to refresh my memory. I don't remember that.

24 Q. Well, you talked about it with Mr. Correa, right?

25 A. Like I said, again, sir, I don't remember that.

G397MIR5

Leonard - cross

1 Q. Well, you do remember that every now and then the doctor  
2 would bring you into the office, call you and say, look, I want  
3 to get the doctor on the phone and verify the MRI, right?

4 A. Every now and then you said?

5 Q. Yes.

6 A. Every now and then, yes.

7 Q. And this one instance that you were talking about with  
8 Correa, the doctor caught you because he said this is fake  
9 paperwork and that there was just someone on the other line  
10 sitting there waiting for you to call, and at the end of the  
11 day there was no doctor. Right?

12 A. I can elaborate on that, sir. It wasn't -- it's not that I  
13 got caught. The fact is he asked me to verify, I told him yes,  
14 he received a call himself, and the person who picked up hung  
15 up. He told me, Damon, this person is just playing games. But  
16 he didn't throw the patient out; he still saw him.

17 Q. Well, then why was your friend Dogs getting mad at you for  
18 losing the patient? Why are you saying, oh, he is mad at me  
19 but he's not listening, I can't do this anymore?

20 A. At the end of the day, sir, that was just me and Correa  
21 talking, sir. There was nobody mad.

22 Q. Well, it was just you and Correa talking, but Correa had a  
23 recording device on. That's the difference, right?

24 A. Exactly.

25 Q. You didn't know he had a recording device on him.

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Leonard - cross

1 A. No.

2 Q. And so that instance when your friend Dogs lost his  
3 patience, you're like I don't understand, why is he mad? He's  
4 getting his other patients, he's getting two or three, you  
5 know, he shouldn't be greedy, he should be happy.

6 A. Well, I remember saying -- I remember having that  
7 conversation with Mr. Correa. I remember saying that to him.

8 Q. Because he lost a patient, and Dogs was complaining to you,  
9 right?

10 A. You can complain, sir, but at the end of the day, what is  
11 that going to help? I'm not the one that's writing the  
12 prescriptions.

13 Q. But the person who is seeing the patient is no longer  
14 seeing a patient once they found there was fake paperwork,  
15 right?

16 A. Sir --

17 Q. Right? Yes?

18 A. No. No. No.

19 Q. He discharged -- the doctor discharged patients when he  
20 found out they had fake paperwork, right?

21 A. Not all the time, sir, not at all. Only after, like I tell  
22 you, after certain instances. After Dr. Terdiman, after the  
23 PMP was in.

24 Q. When did this Terdiman incident happen?

25 A. Oh, February 2014.

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Leonard - cross

1 Q. That you remember clearly.

2 A. Of course. Yeah, of course.

3 Q. Because you were upset about it, right?

4 A. About what?

5 THE COURT: The Dr. Terdiman incident.

6 THE WITNESS: No, ma'am. No, ma'am.

7 Q. Well, you were a patient of that doctor, weren't you?

8 A. But I had been long gone, stopped. I been stopped way  
9 before that.

10 Q. You stopped going in as a patient before he got arrested.

11 A. I decided, yes.

12 Q. To stay away from that, right?

13 A. I just stopped going, because now --

14 Q. But you knew you were a patient of his, and now that he was  
15 arrested your name might come up in the investigation, right?

16 A. Sir, I had been stopped going, so that was way after, so I  
17 been stopped going way before that whole Terdiman situation  
18 went down, sir.

19 Q. Well, you did know that when Dr. Mirilishvili discovered  
20 fraudulent MRIs, he would kick the patient out, and he would  
21 scream at both you and Javier because it was not verified,  
22 right?

23 A. No.

24 Q. That happened at least on the occasion when you were  
25 talking about it with Mr. Correa when he had a wire on, right?

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Leonard - cross

1 A. Only -- like I said, like I mentioned earlier, only people  
2 started really getting kicked out after he felt he was going to  
3 get caught, so he started kicking certain people out. It  
4 wasn't everybody. Still people was getting prescriptions like  
5 crazy.

6 After a while, when he saw the Terdiman situation, he  
7 talked to me about it, and he felt that if he needed to start  
8 getting rid of people, that's what he did. But other than  
9 that, he didn't kick nobody out. The rate was very low.

10 Q. The rate was very low?

11 A. Very low.

12 Q. Then why even have this conversation with Correa about the  
13 fact that your man Dogs is losing a patient, if it didn't  
14 matter, if the rate is low?

15 A. Well, just for one, Mr. Correa, the reason I spoke to Mr.  
16 Correa like that is because he used to be an ex-employee, so I  
17 could, you know -- I can talk with him and, you know -- you  
18 know, we can talk, and we can have a conversation, so he  
19 understood what I went through. So that's the real reason why  
20 most of the time why we had the conversation. Most of the time  
21 it was BS but, you know.

22 Q. Well, at that point in time in September 2014 you were at  
23 the helm of the operation to try to get your crew chiefs  
24 prescriptions, right?

25 A. Absolutely not, no. That wasn't my job, sir.

G397MIR5

Leonard - cross

1 Q. You wouldn't say that you were at the helm?

2 A. At the helm of what?

3 Q. At the helm of what you were up to in the office.

4 A. No, sir. The only thing that I was at the helm is the fact  
5 that I was the only guy working in the office, so of course if  
6 you call that the helm, yeah.

7 Q. Well, let me ask you this. In your conversation with Mr.  
8 Correa on September 11 you used the words -- when you used the  
9 words you were at the helm, you weren't talking about being the  
10 only employee of Dr. Mirilishvili's clinic, were you?

11 A. Absolutely.

12 Q. Well, when you used those terms, you talked about from the  
13 fact that you got to keep all the crew chiefs happy because  
14 they could put you in a hole.

15 A. Sir, I never mentioned that. I never remember me saying  
16 that to Mr. Correa.

17 MR. MAZUREK: Your Honor, if I could go to the  
18 transcript. It's DM 603, page 11, September 11 recording,  
19 attribution at the top of the page starting at about 27 minutes  
20 and 38 seconds.

21 MS. CUCINELLA: Can you repeat that?

22 MR. MAZUREK: Sure. Page 11.

23 THE COURT: Top of the page.

24 MR. MAZUREK: Top of the page, starting at the time  
25 marker 27 minutes 38 seconds.

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Leonard - cross

1 MS. CUCINELLA: I believe the witness said he didn't  
2 remember.

3 MR. MAZUREK: He said he didn't say it.

4 THE COURT: I heard him. Could you read back the  
5 witness' very last answer.

6 (Record read)

7 THE COURT: He said both. So let's ask the clarifying  
8 question.

9 Do you not remember what you said? Or do you remember  
10 what you didn't say that?

11 THE WITNESS: I remember -- I don't remember that,  
12 ma'am.

13 THE COURT: No, no. Listen to me. Did you say those  
14 words? Yes or no.

15 THE WITNESS: No. No, ma'am.

16 THE COURT: You did not say those words.

17 MR. MAZUREK: Then play the tape, your Honor.

18 THE COURT: Play the tape.

19 (Audio recording played)

20 Q. What did you mean when you said they put me in a hole?

21 A. What that meant was I'm talking about as far as going out,  
22 sir.

23 Q. Sorry?

24 A. I'm talking about as far as going out.

25 THE COURT: I don't understand what you are saying.

G397MIR5

Leonard - cross

1 What words are you saying?

2 THE WITNESS: I mean talking about going out. I'm  
3 talking about going out.

4 THE COURT: You're telling him you're going out?

5 THE WITNESS: No, he is asking me what that meant.  
6 I'm telling him I turned up going out.

7 THE COURT: But, see, you're mumbling or something,  
8 and I can't understand the words that you are saying. I'm  
9 really sorry.

10 THE WITNESS: OK.

11 THE COURT: Very slowly.

12 THE WITNESS: He asked me, ma'am, what did I meant by  
13 them putting me in a hole.

14 THE COURT: Yes, that was the question. What did you  
15 mean when you said they put me in a hole?

16 THE WITNESS: Meaning going out, ma'am. That's what I  
17 meant, meaning going out. I never was going to go out with  
18 them. That's what they were putting me in the hole. I never  
19 go out with them? That's what I was explaining to Mr. Correa.  
20 It was ebonics really; it never meant that at all.

21 (Record read)

22 THE COURT: OK.

23 Q. I'm afraid to ask the question, but what did you mean by  
24 I'm at the helm here.

25 A. Just that I was the only one at the office right now and

G397MIR5

Leonard - cross

1 meaning if I was to go out and get myself in trouble, who is  
2 going to work at the office. That's what I meant.

3 Q. That you're irreplaceable.

4 A. Oh, yeah, at that time of course I was irreplaceable, of  
5 course, with the shenanigans going on, of course.

6 Q. Well, you were upset with Augustine Cruz because at one  
7 point in time he was telling stories about you, trying to get  
8 you nervous so that maybe you would leave the job. Do you  
9 remember that?

10 A. Yes, I remember that, sir. I remember having that  
11 conversation.

12 Q. And that made you upset, right?

13 A. Actually, sir, I wasn't really upset. I was just annoyed  
14 that it was a bunch of stories that was being sent out.

15 (Continued on next page)

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G39LMIR6

Leonard - cross

1 BY MR. MAZUREK:

2 Q. Well, the stories that you were upset about was that  
3 Mr. Cruz was trying to get you nervous about going to jail,  
4 right?

5 A. Well, I gathered the fact that he wanted, he wanted to be  
6 in the office himself. So that's the reason why I thought he  
7 started putting out lies.

8 Q. So he could be at the helm of running the operation, right?

9 A. No, not at the helm. Just be in the office himself and do  
10 whatever he wanted to do. That's all.

11 Q. You didn't say that the reason he was telling this stuff to  
12 you was because so that you could leave so he could take the  
13 helm?

14 A. I did mention saying that, sir, just being the only one in  
15 the office. That's what I meant by the helm, to clarify.

16 Q. That's because of the job of office manager being at the  
17 helm?

18 A. Yes, sir.

19 Q. It wasn't so that you would have access to the ability to  
20 direct, to obtain scripts to sell on the street and overrides  
21 and make, you know, close to \$200,000?

22 A. I wouldn't know that. Only he would know that, sir. I  
23 wouldn't know that.

24 Q. Now, you really wanted to keep this job as office manager,  
25 you didn't want to get fired, right?

G39LMIR6

Leonard - cross

1 A. No.

2 Q. No, you didn't want to get fired?

3 A. No, because I had a family to feed at home and at that  
4 time, I just, you know, it was a job.

5 Q. You said you were making at that point what, about six,  
6 \$700 a week?

7 A. About 750 to be exact.

8 Q. 750. Now, you said you had your own patients that were  
9 getting obtaining prescriptions at that time?

10 A. Yes, sir.

11 Q. So you could make that amount of money on just one  
12 prescription per month, right?

13 A. Not exactly. After costs, like I explained to you, after  
14 costs, it wasn't as much the doctor was paying me at all.

15 Q. But is it your testimony, sir, that you didn't want to lose  
16 that job because of the 750 per week, that's your testimony?

17 A. Yes, sir.

18 Q. It wasn't that you were able to control the operations of  
19 all these crew chiefs and having the ability to make tons more  
20 money?

21 A. Well, let's clarify. I wasn't controlling no crew chiefs.

22 Q. But you were at the helm, so you could help those crew  
23 chiefs change paperwork, right?

24 A. No, sir. I was at the helm actually to help the doctor.  
25 That's what I was at the helm for, to help him.

G39LMIR6

Leonard - cross

1 Q. Well, let me ask you this. In September of 2014, when you  
2 were telling Mr. Correa about the fact that Black was upset  
3 because there's no overrides; do you remember that?

4 A. Yes, I remember that.

5 Q. OK. That he wasn't going to be able to pressure you  
6 because if you started doing or trying to do overrides and got  
7 caught --

8 MS. CUCINELLA: Objection, your Honor.

9 THE COURT: I'm sorry. I can't hear two voices at  
10 once. Let him finish the question.

11 MS. CUCINELLA: He's reading from a document.

12 THE COURT: I don't care. He's asking a question.

13 MR. MAZUREK: Now I forgot my question.

14 THE COURT: Start over again.

15 MR. MAZUREK: Thank you.

16 Q. So in September 2014, you were saying that you remember a  
17 guy named Black being upset because you're telling him there's  
18 no overrides, right?

19 A. I don't remember that, sir. I just don't remember that  
20 conversation. I don't remember that.

21 Q. You just talked about it a second ago.

22 THE COURT: Please don't fight with the witness.

23 MR. MAZUREK: Sorry, Judge. I'm trying my best.

24 Q. You were telling Mr. Correa that on September 20 and  
25 September 2014 that you were not going to do any overrides

G39LMIR6

Leonard - cross

1 because if you get caught, then you're walking, you're walking,  
2 and the next thing is you're doing something for somebody else  
3 but not for yourself?

4 A. I don't remember that conversation neither, sir. I don't  
5 remember me telling Correa that, sir, at all. I don't remember  
6 that.

7 Q. Well, when your -- you do remember about what we talked  
8 about the overrides coming to an end and that was causing  
9 concern for some of the crew chiefs, right?

10 A. Say that again?

11 Q. The fact that the overrides were coming to an end were  
12 upsetting people who were crew chiefs?

13 A. They were, sir, they were.

14 Q. And they were trying to put pressure on you to still do it,  
15 right?

16 A. Yes.

17 Q. OK. And you were saying no, I can't do it because then I'm  
18 going to be, I'm going to lose my job and I got to stay here.  
19 I'm not letting them take me out of this position?

20 A. No, not really, sir. That wasn't exactly entirely it like  
21 that at all. I'm glad, I was glad that the fact that you  
22 couldn't override anything anymore from what I learned from  
23 Jomaris or whatever. I was just happy about that. So them  
24 being mad, I didn't really care about that really being mad  
25 because ultimately, hey, as long as the doctor was still

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Leonard - cross

1 writing prescriptions, these people got over that just like  
2 that.

3 Q. Well, sir, the reason you were having this conversation  
4 with Mr. Correa was because you were upset that you're feeling  
5 pressure to have to be able to change paperwork so these crew  
6 chiefs can continue to get -- to fool the doctor, right?

7 A. Wrong. You keep saying to me upset. I wasn't upset, sir,  
8 at all. Eventually, like I said again and again, he's going to  
9 write the prescription anyway. So it didn't matter. There was  
10 a bunch of patients, follow-up patients that was still was  
11 going to be seen regardless.

12 Q. But if the paperwork were not right, the doctor would kick  
13 out the patient?

14 A. That was only for new patients, sir.

15 Q. Only for new patients?

16 A. Only for new patients, MRI referral.

17 Q. What about the patient that you talked to Mr. Correa about  
18 who had the bad urine test after the secured portal?

19 A. That was for urine. We're talking about kicking out when  
20 there was new people, basically that's when he would kick  
21 people out. For urine, sir, that didn't happen a whole lot.  
22 That didn't happen a whole lot at all.

23 Q. It just so happened the time Correa was on a wire is when  
24 it happened?

25 A. That's because it probably happened that week so I

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Leonard - cross

1 remembered that.

2 THE COURT: OK. I think we've exhausted this subject.

3 MR. MAZUREK: Yes.

4 Q. Now, you had talked on direct examination about the  
5 prescription monitoring program; do you remember that?

6 A. PMP, yes.

7 MR. MAZUREK: And if we could put something on the  
8 screen, GX206, which is already admitted into evidence, and at  
9 page 58 of the exhibit.

10 Q. Is this an example, sir, of what a PMP printout looks like?

11 A. Yes, sir.

12 Q. If we can just expand the top portion, the printed portion  
13 of the page. And you understood that this was a database that  
14 was maintained by New York State to report on controlled  
15 substance prescriptions, right?

16 A. Yes, sir.

17 Q. And you were taught about this by Jomaris Javier?

18 A. Yes.

19 Q. And your job, sir, was to input the patient's name and  
20 conduct a search on the PMP, right?

21 A. Yes.

22 Q. And, for example, in this case we see the patient name on  
23 the left-hand side of the page, about a third of the way up, is  
24 Kevin Creighton; do you see that?

25 A. Yes, sir.

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Leonard - cross

1 Q. And there are prescriptions that are shown in the box below  
2 from Dr. Mirilishvili, right?

3 A. Yes.

4 Q. Now, originally you were told to upload this kind of  
5 document into the Practice Fusion, right, which was the  
6 computer system?

7 A. Yes.

8 Q. And you understand when I say Practice Fusion, that was the  
9 electronic medical records that were maintained by the office,  
10 right?

11 A. By the doctor, yes.

12 Q. And you had your own password to the Practice Fusion  
13 system, correct?

14 A. Given to me by the doctor.

15 Q. Yes. So you had access under your user name and password?

16 A. Yes.

17 Q. And you knew that other staff members were also given user  
18 names and passwords, right?

19 A. Yes.

20 Q. And by the way, that included the physical therapists in  
21 the office, correct?

22 A. They didn't have access to this, sir.

23 Q. I'm sorry?

24 A. They didn't have access to the PMP.

25 Q. You don't believe that the physical therapists had access?

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Leonard - cross

1 A. That wasn't his job.

2 Q. I'm sorry, to the Practice Fusion.

3 A. He had access to Practice Fusion, but he didn't see this.

4 Q. Because the physical therapist had more limited access to  
5 the Practice Fusion database?

6 A. Come again?

7 Q. Because the physical therapist did not have full access to  
8 everything that's in the patient file on Practice Fusion?

9 A. Well, I believe the physical therapist wasn't even looking  
10 into that. He was just doing his part. So whatever he had  
11 access to, that's what he was looking into. He wasn't going to  
12 anything else.

13 Q. Now, Jomaris Javier had a user name and password to  
14 Practice Fusion?

15 A. Yes, until she was fired.

16 Q. Until she was fired. And Augustine Cruz the same?

17 A. The same.

18 Q. Until he was fired, right?

19 A. Yes.

20 Q. Now, there came a time and you understood that one of the  
21 reasons that Ms. Javier was fired was because the doctor found  
22 out that she was inputting information incorrectly on some of  
23 the PMPs?

24 A. Yes.

25 Q. And there came a time when the doctor didn't want you to

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Leonard - cross

1 input on the PMPs as well, correct?

2 A. Can you clarify that?

3 Q. There came a time when the doctor also didn't want you to  
4 print this out and put it up on -- I'm sorry. Withdrawn.

5 There came a time when the doctor didn't want you  
6 simply to verify that you checked the PMP?

7 A. Sir, I didn't have to verify anything. Once you put the  
8 patient name in, it pops up. Whatever information is there is  
9 going to him. Pretty simple.

10 Q. There was a time when in fact you could just write on the  
11 patient chart or file that you checked the PMP, you viewed it  
12 at the desk?

13 A. I could elaborate on that. The only reason why that was  
14 done was because the doctor told me -- we made the call to the  
15 DEA about the situation. We had situations where certain  
16 patients names wouldn't come up accurately. So I was told by  
17 the doctor call DEA. We called DEA. I spoke to the young lady  
18 myself. She told me, she says, I asked her. I said we're  
19 having a problem. The doctor wants to know why the patient  
20 name is not coming up, why is nothing coming up. It could be  
21 one or two things she told me. Either the patient never been  
22 nowhere before or it's been the last six, seven months hasn't  
23 been anywhere so it's not coming up. That's why.

24 Q. Let me interrupt you there for a second.

25 You had that conversation with someone from the New

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Leonard - cross

1 York State DEA because the doctor asked you to do that?

2 A. Yes, sir.

3 Q. Because he wanted to make sure that the information on  
4 these PMPs was correct and accurate?

5 A. Yes.

6 Q. And sometimes there were people who called him to let him  
7 know if there was a mistake, for example, I think you mentioned  
8 a pharmacist by the name of Frank from Ascan Pharmacy, right?

9 A. Yes.

10 Q. Now, you thought that if nothing comes up, you can just  
11 write it, you write on the thing, you reviewed it at the desk  
12 and send it off and that was enough?

13 A. I didn't think nothing. That is what I was told do. If I  
14 viewed it and nothing came up, write that you viewed it and  
15 give it to the doctor. That's what I was told by the doctor.

16 Q. The doctor wanted the actual printed version uploaded,  
17 right?

18 A. What actual printed version, of the PMP itself?

19 Q. As opposed to you just writing down that you saw it and  
20 nothing came up and send it off?

21 A. Sir, everything was getting scanned. So he saw everything  
22 was scanned to his computer. Nothing went to the doctor  
23 without being scanned. That's what he wanted. So whatever I  
24 viewed from the PMP, if I wrote on it, he knew it because he  
25 told me, plus it was scanned. So he had the information, the

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Leonard - cross

1 data in his computer.

2 Q. He didn't want to just take your word on the verification.

3 He wanted you to also put the scan in the system. Right?

4 A. Well --

5 Q. Both?

6 A. To tell you the truth, like I said before, he actually  
7 spoke to them too. So it wasn't just like I spoke to them and  
8 hung up. He spoke to them also. That's what they told him.  
9 That's when he told me. OK, they're saying if you viewed it  
10 and nothing came up, just write that you viewed it. OK. No  
11 problem.

12 Q. But that wasn't enough. It had to be scanned. That's what  
13 I'm saying. You wanted to just say it's enough to just write  
14 it on the patient chart. But the doctor said no, no, no. I  
15 want this scanned and put into the system. Right?

16 A. Sir, that sound crazy. It was getting scanned regardless.  
17 That was part of my job. Everything was getting scanned. ID,  
18 urinalysis, PMP, everything was getting scanned. So how is  
19 that the doctor saying he wanted to scan no matter what. I  
20 never told him I wasn't going to scan.

21 Q. In September 2014, when you spoke to Mr. Correa, you used  
22 very similar language because you were upset that the doctor  
23 was thinking, he was getting crazy, you were getting crazy like  
24 J and that you were upset because he's like -- you called him a  
25 name -- because you spoke to the DEA and if nothing comes up,

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Leonard - cross

1 you can just write that. Just write off on the thing and send  
2 it off.

3 Right?

4 A. Can I elaborate on that, sir, again?

5 THE COURT: No. You can't elaborate.

6 THE WITNESS: OK.

7 A. Well, no, sir.

8 Q. That's what you were saying to Mr. Correa in  
9 September 2014, right?

10 A. I was saying that because like I told you, he wanted me to  
11 call, we called. That was it. And he told me.

12 Q. But you were upset with him that if nothing comes up, that  
13 you should just be able to write down that you saw the screen  
14 and that is enough and send it off on the patient chart?

15 A. We never agreed to that. He was upset because of the fact  
16 that nothing was coming up, so that's why we agreed to call the  
17 DEA.

18 Q. My question, sir, is that you were upset that the doctor  
19 didn't just want to take your word?

20 A. That's wrong, sir.

21 Q. Well, that's what you said to Mr. Correa, isn't it?

22 A. That's not exactly what I said to him. That wasn't in  
23 those words.

24 Q. It's not what you said?

25 A. You're still not listening. I said that wasn't in the

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Leonard - cross

1 words I said. He was upset because the fact that --

2 MR. MAZUREK: Your Honor, I'm going to ask to play on  
3 DM603 -- 602, I'm sorry. July 10, 2014, the bottom of page 3.

4 THE COURT: OK. Starting at 22:22?

5 MR. MAZUREK: I think a little bit further down. So  
6 let's start about 22:30 of page 3 of DM602.

7 (Audio recording played)

8 Q. So, sir, what the doctor wanted was what we saw on the  
9 screen, right, that you scan in the printed page even if  
10 nothing came up, right?

11 A. I did scan it, sir. You keep asking me he didn't want it  
12 scanned. I did scan it. There's nothing in there telling me I  
13 didn't scan it.

14 Q. And the reason -- let me just point something out. If we  
15 can expand on the exhibit on the screen from the confidential  
16 drug utilization report title, down to the line data detail  
17 level.

18 Looking now on the screen. Do you see the search term  
19 is Kevin Cravey, male, and date of birth? And there's a search  
20 data date, I guess, 8/28/2013. Do you see that there's a time  
21 stamp?

22 A. Yes.

23 Q. And then there's a line that says, the drug utilization  
24 report below displays all of the controlled substances  
25 prescriptions, if any, that your patient has filled in the last

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Leonard - cross

1 six months. The information displayed on this report is  
2 compiled from pharmacy submissions to the department and  
3 accurately reflects the information as submitted by the  
4 pharmacies.

5 Do you see that, that shows up on every report, right?

6 A. Yes.

7 Q. And then the next line, this report was requested by Moshe  
8 B. Mirilishvili, right?

9 A. Yes.

10 Q. And his name appears because in order to access this  
11 database, you needed to enter into a user name and password,  
12 right?

13 A. Yes.

14 Q. And he gave you the user name and password to use?

15 A. Yes, for me, yes.

16 Q. And then the next part is a reference number, do you see  
17 that, 346081?

18 A. Yes.

19 Q. And that is a number that is kept by the New York State PMP  
20 referencing this particular search, right?

21 A. Yes.

22 Q. And so if you had kept, if you keep the printed version of  
23 that, you would be able to reference that search or know  
24 exactly the search that was conducted, right?

25 A. I guess so. I'm not sure. I never even looked at that

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Leonard - cross

1 like that, sir. I don't know. That's something new.

2 Q. So when you were writing, just if you were writing to say  
3 nothing showed up, there would not be a reference number on  
4 that note, right?

5 A. Wait a minute.

6 Q. You never wrote a note that said nothing showed up on the  
7 PMP and then put a reference number?

8 A. Again, sir, this is what I was told by the doctor.

9 Q. My question is before, if you were just writing down, OK, I  
10 checked PMP, nothing showed up, that would be the extent of  
11 your note. Right?

12 A. Yes.

13 Q. Thank you. Now, in September 2014, you were telling the  
14 crew chiefs, you can't do, you can't do any fake paperwork  
15 anymore, right?

16 A. I don't remember that. I don't remember me saying that,  
17 sir. I don't remember that. I don't remember that.

18 Q. You don't remember telling them that you're not doing any  
19 new patients, you're not doing any new patients because we've  
20 only got fake paperwork?

21 A. I don't remember saying it just like that, sir. I don't  
22 remember exactly the way you're saying it. I don't remember  
23 that.

24 Q. In sum and substance was that what happened, you were  
25 telling Mr. Correa that you're not doing any new patients

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Leonard - cross

1 because you only have fake paperwork?

2 A. Like I said, again, sir, I can't remember actually what I  
3 said to him.

4 Q. Do you remember telling him at that time in September 2014,  
5 you're telling the crew chiefs that the only people who could  
6 come in now are people who really got real shit because that's  
7 all that I can get past the doctor?

8 A. I never said that, sir. I never said that's the only thing  
9 that I can get past the doctor. Never said that.

10 Q. You said people -- we're not doing any new patients, you're  
11 not doing any new patients because you only have fake paperwork  
12 and the only people really got real shit?

13 A. Like I said again, sir, I can't remember exactly what I  
14 said. I can't remember that.

15 Q. You don't remember that?

16 A. I don't remember that.

17 Q. If you saw the transcript, would it help to refresh your  
18 memory?

19 A. Show me something.

20 Q. I'm going to show you what's been marked as PM603. I think  
21 it's still in front of you.

22 A. Yeah. What page?

23 Q. Page 16. I'll show you. Same page. Just up to here.

24 Read it to yourself. Let me know when you're done.

25 A. OK.

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Leonard - cross

1 Q. Does that refresh your recollection that you were telling  
2 Mr. Correa that you were telling other crew chiefs like Dogs  
3 that you're not doing new, you're not doing new because you  
4 only have fake paperwork?

5 A. Sir, I only talked to Correa. I didn't talk to Dogs about  
6 anything.

7 Q. But you were relaying a conversation that you had with  
8 Dogs, that's what you were talking about at the time with  
9 Correa?

10 A. I only relayed that conversation to Correa because, you  
11 know, just like I said, we just BSing again, just bullshitting  
12 really.

13 Q. What you were talking to Correa about was the fact that  
14 Dogs was asking you to do new patients and you said you can't  
15 because you only have fake paperwork, right?

16 A. No, sir. The reason why we couldn't do new patients is  
17 because the doctor didn't want to take new patients.

18 MR. MAZUREK: Your Honor, then I'm going to play  
19 the tape.

20 THE COURT: Which one?

21 MR. MAZUREK: Yes. This one is September 11, DM603,  
22 page 16. We could start the attribution at 41 minutes, 31  
23 seconds.

24 (Audio recording played)

25 MR. MAZUREK: I'm sorry. 41 minutes, 31 seconds from

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1 9/11. I'm sorry. It's a misprint here. Looks like it's  
2 42:31.

3 (Audio recording played)

4 Q. And when you said fake paperwork, you're meaning paperwork  
5 that could not be verified from an MRI facility or referral?

6 A. Again, like I said, I was just talking to Mr. Correa about  
7 that. That was BS. That's what I'm trying to say.

8 MR. MAZUREK: Your Honor, I'm moving on to a new  
9 subject. Would this be a good breaking point?

10 THE COURT: Yes. How much more do you have with this  
11 witness?

12 MR. MAZUREK: I'm not quite sure, but not lengthy.

13 THE COURT: Well, here's what I'm hoping folks. If we  
14 take a break for the day now, he'll look over his questions and  
15 decide he doesn't really need to ask them. That happens more  
16 than you could possibly imagine. The flip side is sometimes  
17 they find more questions that they want to ask, so it's a crap  
18 shoot, you know, but.

19 MR. MAZUREK: I'll err on the former side.

20 THE COURT: So we'll give Mr. Mazurek an opportunity  
21 to look over his questions and see how quickly he can complete  
22 the cross-examination of this witness and you'll go home and  
23 I'll see you in the morning, quarter to ten. Don't discuss the  
24 case. Keep an open mind.

25 (Continued on next page)

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1 (Jury not present)

2 THE COURT: Sir, you can stand down. You can't talk  
3 to the folks at the government overnight. Don't have any  
4 conversation with them. OK?

5 THE WITNESS: I can go down?

6 MS. CUCINELLA: Your Honor, can we just clarify about  
7 logistics in terms of him coming back tomorrow.

8 THE COURT: You have to come back here tomorrow. You  
9 have to be here at 9:30 tomorrow morning.

10 MS. CUCINELLA: And to the extent he needs a letter  
11 for his employer, is that something I can have my agent send to  
12 him?

13 THE COURT: Yes. We'll get you a letter for your  
14 employer. Don't worry. You'll be out of here long before  
15 noon, I hope. OK.

16 THE WITNESS: OK, ma'am.

17 MS. CUCINELLA: Thank you, Judge.

18 THE COURT: OK.

19 (Witness not present)

20 THE COURT: Yes. The agent can give him a letter for  
21 his employment. The agent can't talk to him about his  
22 testimony, all right.

23 MS. CUCINELLA: Thank you, Judge.

24 THE COURT: Mr. Mazurek.

25 MR. MAZUREK: I know it's tedious.

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1                   THE COURT: There's only so much beating the dead  
2 horse can take.

3                   MR. MAZUREK: I understand.

4                   THE COURT: Some of this we're going over for the  
5 seventh, eighth time.

6                   MR. MAZUREK: I understand. There's just a lot of  
7 material.

8                   THE COURT: Or not.

9                   OK. Who's up tomorrow?

10                  MS. CUCINELLA: The government intends to call our  
11 expert, Dr. Gharibo; two very short witnesses, a Detective  
12 Beers, a paralegal from our office, Molly Rosen; and then  
13 ending with Adrian Castro. We're hopeful to be able to rest  
14 tomorrow.

15                  THE COURT: I'm hopeful too. OK. I'll see you in the  
16 morning.

17                  (Adjourned to March 10, 2016, at 9:45 a.m.)

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